

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

<b>Appeal in ITA No</b>	<b>Assessee</b>	<b>Revenue</b>	<b>A.Y</b>
132/Hyd/2018	Shri Pujala Mahesh Babu, Hyderabad PAN:AEPPP5729L	A.C.I.T. Central Circle-2(3) Hyderabad	2012-13
133/Hyd/2019	-do-	-do-	2013-14
134/Hyd/2019	-do-	-do-	2014-15
135/Hyd/2019	-do-	-do-	2015-16
126/Hyd/2019	A.C.I.T. Central Circle-2(3) Hyderabad	Shri Pujala Mahesh Babu, Hyderabad PAN:AEPPP5729L	2013-14

Assessee by:	Shri S. Rama Rao, Advocate
Revenue by:	Shri Solgy Jose T. Kottaram, DR
Date of hearing:	29/07/2022
Date of pronouncement:	26/09/2022

**ORDER**

**Per R.K. Panda, A.M**

These batch of four appeals filed by the assessee and one appeal filed by the Revenue are directed against the separate orders dated 6.11.2018 of the learned CIT (A)-12, Hyderabad relating to A.Ys. 2012-13 to 2015-16 as mentioned above. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

2. There is a delay of 5 days in filing of these appeals by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to medical reasons. After considering the contents of the condonation petition and after hearing the learned

DR, the delay in filing of these appeals by the assessee are condoned and the appeals are admitted for adjudication.

**ITA No.132/Hyd/2018-A.Y 2012-13 (By Assessee)**

3. Fact of the case, in brief, are that the assessee is an individual and derives income as an agent of real estate activities. He filed his original return of income on 20.06.2012 declaring total income of Rs.4,29,940/-. A search and seizure operation u/s 132 of the I.T. Act was conducted in the Mansani group of cases on 20.11.2014 and the case of the assessee was also covered during which certain incriminating materials were seized. A survey operation u/s 133A of the I.T. Act, 1961 was also conducted in the business premises of the assessee on 20.11.2014 during which certain documents were also impounded. In response to the notice u/s 153A, dated 22.12.2015, the assessee filed his return of income on 20.11.2016 declaring total income at Rs.3,85,860/-. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A of the Act on 29.12.2016 determining the total income at Rs.2,86,82,100/-.

4. In appeal, the learned CIT (A), partly allowed the appeal filed by the assessee. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

*“The order of the learned Commissioner of Income-Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

*2.The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in initiating the proceedings u/s 153A of the I.T. Act inspite of the fact that search was not contemplated in the case of the appellant.*

3. *The learned Commissioner of Income-Tax (Appeals) ought to have accepted the explanations furnished in respect of each receipt and expenditure without relying on the statement recorded at the time of search.*

4. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the addition of Rs.1,07,35,000/-holding that the cash receipt to the said extent was not properly explained.*

5. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in considering the receipt of Rs.51,80,000/- as unexplained receipt.*

6. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the addition of Rs.25,87,000 made by the Assessing officer and in holding that the said amount represents unexplained investment in acquisition of the land.*

7. *The learned Commissioner of Income-Tax (Appeals) erred in Confirming levy of interest u/s 234A(3) and 234B(3) of the I.T. Act. Any other ground that may be urged at the time of hearing.*

8. *Any other ground that may be urged at the time of hearing”.*

5. Grounds of Appeal No.1, 3 & 8 being general in nature are dismissed.

6. So far as Ground No.2 is concerned, the same relates to the validity of the proceedings u/s 153A of the I.T. Act. The learned Counsel for the assessee submitted that the search was not contemplated in the case of the assessee and therefore, the initiation of proceedings u/s 153A are not valid.

6.1 After hearing both the sides, we do not find any merit in the above ground raised by the assessee. A perusal of the warrant of authorization dated 19.11.2014, copy of which is placed at page 25 of the Paper Book, clearly shows the name of the assessee as Pujala Mahesh Babu. Similarly, the copy of the Panchnama also clearly mentions the name of the assessee Shri Pujala Mahesh Babu. Therefore, once the name of the assessee is

mentioned in the copy of the search warrant and in the copy of the Panchnama, the argument of the learned Counsel for the assessee that the CIT (A) is not justified in confirming the action of the Assessing Officer in initiating proceedings u/s 153A of the Act is misconceived and therefor, the same is liable to be dismissed. We accordingly dismiss the ground raised by the assessee on this issue.

7. Ground of Appeal No.4 relates to the order of the learned CIT (A) in confirming the addition of Rs.1,07,35,000/- made by the Assessing Officer on account of cash receipts.

7.1 Fact of the case in brief are that the Assessing Officer during the course of assessment proceedings noted that Annexure A/PMB/04 is a blue SBI Life Insurance diary 2009 impounded u/s 133A from the PMB premises of the assessee. As per Written Page No 8 of Annexure A/PMB/04, an amount of Rs.1,07,35,000/- was received by the assessee from Turbo Company towards sale of 5 acres 21 guntas @Rs 34,00,000/- per acre totaling to Rs 1,87,85,000/- out of which Rs.1,07,35,000/- is received by the assessee on 7-9-2011& 9-11-2011. He, therefore, asked the assessee to show cause as to why the said cash receipts should not be brought to tax in his hand for the A.Y 2012-13. The assessee stated that sale proceeds of Rs 1,00,23,970/- is on a/c of sale of 7 acres and 34 guntas agricultural land which has been offered as exempted income. However, the Assessing Officer noted that the cash receipts and the area of land do not match with the seized material. He noted that the assessee during the course of search action had declared Rs 15 crores as additional income for different A.Ys vide his statement recorded u/s 132(4) on 20.11.2014 and resumed on 21.11.2014. The above additional

income of Rs.1,07,35,000/- was once again admitted by the assessee vide his explanation submitted to the DDIT (Inv.) Unit.II(1) Hyderabad which is specifically mentioned at para 11.5 of the said explanation. Since the assessee failed to offer any convincing reply during the assessment proceedings, the Assessing Officer treated the cash receipts of Rs.1,07,35,000/- as his undisclosed income and brought the same to tax.

8. Before the learned CIT (A), the assessee submitted that he along with another co-owner Shri K.Narasimhulu executed the sale deed on 8.12.2011 in favour of Turbovent Industries Private Limited. It was submitted that the entire land is agricultural land situated beyond 8 kms from Hyderabad Municipal Corporation limits. The lands were not converted into non-agriculture. Revenue records also show that the lands are agriculture in nature. The assessee and the co-owner have carried on agricultural operations on the said land and therefore, the asset sold is not a capital asset within the meaning of section 2(14) of the I.T. Act.

9. On the basis of the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report from the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) sustained the addition made by the Assessing Officer. While doing so, he noted that during the search & seizure proceedings, the assessee had admitted Rs.15.00 crores as additional income in the statement recorded u/s 132(4) of the Act. He had filed an affidavit to this effect before the Investigation Wing and he had even submitted how he had arrived at the additional income with reference to the seized

material. Although the search was conducted on 20.11.2014, the return was filed on 21.11.2016 and no proper explanations were made before the Assessing Officer who made the addition on the basis of seized material. Thus, the assessee even after 2 years did not furnish any explanation before the Assessing Officer during the course of assessment proceedings. Further, the amount was also worked out by the assessee himself as his undisclosed income in the written submission filed before the DDIT. In view of the above and relying on various decisions to the proposition that retraction should be within reasonable time, the learned CIT (A) upheld the addition made by the Assessing Officer.

9.1 Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

10. The learned Counsel for the assessee submitted that the assessee does not maintain any books of account and therefore, provisions of section 68 are not attracted. Referring to the provisions of section 68, he submitted that as per the said provision, the amount credited into the books of account maintained in the previous year are only required to be charged. Referring to the following decisions, he submitted that since the assessee does not maintain any books of account, the provisions of section 68 have no application:

- a) [2011] 12 taxmann.com 306 (Delhi) - Ms. Mayawati
- b) Hon'ble ITAT Delhi Bench-A order dt.08.06.2018 in ITA.No.5430 & 5431/Del/2017 in the case of Smt. Babbal Bhatia Vs. ITO
- c) Hon'ble ITAT Delhi SMC Bench order dt.11.01.2019 in ITA.No.7309/Del/2018 & Ors. in the case of M/s Nitin Agarwal (HUF) & Ors Vs. ITO

11. He submitted that all the receipts cannot be treated as the income of the assessee except when such receipt is falling

under any particular head of income as provided under the I. T. Act. The Assessing Officer did not consider the nature of the receipt and the head of income under which the amount is assessable. Therefore, the said amount cannot be brought to tax. He submitted that before the Assessing Officer as well as the learned CIT (A), the assessee has stated that he sold the land along with one Shri K. Narsimhulu to Turbovent Industries Ltd vide sale deed dated 8.12.2011 and his part of sale consideration was already admitted as capital gain which was claimed as exempt. He accordingly submitted that the addition made by the Assessing Officer and sustained by the learned CIT (A) is not called for. Referring to various decisions he submitted that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. In his alternate contention, he submitted that due indexation benefit be given for computing the capital gain.

12. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that even after a period of 2 years from the date of search, the assessee was unable to submit satisfactory explanation before the Assessing Officer. The assessee himself had admitted undisclosed income of Rs.15 crores in his statement recorded during the course of search and he himself has computed the manner of such additional income. Therefore, the order of the learned CIT (A) is unjustified on this issue.

13. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We

find the AO in the instant case made addition of Rs.1,07,35,000/- being the amount received by the assessee from Turbovent Industries Ltd towards sale of 5 acres 24 guntas @ Rs.34,00,000/- per acre totaling to Rs.1,87,85,000/- out of which an amount of Rs.1,07,35,000/- was received by the assessee on 7.9.2011 and 9.11.2011. Since the cash receipts and the area of the land did not match with the seized material and since the assessee during the course of search had declared Rs.15.00 crores as undisclosed income for different A.Ys in the statement recorded u/s 132(4) of the Act, the Assessing Officer made addition of Rs.1,07,35,000/- to the total income of the assessee. We find in appeal, the learned CIT (A) sustained the addition on the ground that despite a period of 2 years from the date of search till the date of completion of assessment proceedings, the assessee could not offer any satisfactory explanation and the assessee during the course of search had himself declared additional income of Rs.15.00 crores. It is the submission of the learned Counsel for the assessee that it is not an un-accounted receipt but the same is on account of sale of land and the assessee has claimed such receipt as exempt income. Further, in absence of maintenance of any books of account by the assessee no addition u/s 68 can be made. It is also his submission that although admission is an important piece of evidence but the same is not conclusive.

14. We find some force in the above argument of the learned Counsel for the assessee. The Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. vs State Of Kerala And Anr., reported in 91 ITR 18 has held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It has been held that it is open to the person who



made the admission to show that it is incorrect. We find the assessee in the instant case in the return of income filed by him, has claimed an amount of Rs.1,07,35,000/- as exempt on account of sale of agricultural land. Therefore, we find some force in the argument of the learned Counsel for the assessee that the same cannot be treated as unexplained cash receipts, However, the alternate contention of the learned Counsel for the assessee that the same can be treated as capital gain and due indexation benefit be allowed is acceptable. We, therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to consider the amount of receipt at Rs.1,07,35,000/- by the assessee as sale proceeds of a capital asset and allow consequential indexation benefit of the cost of the asset and determine the long-term capital gain after verifying the details. Needless to say, that the Assessing Officer while deciding the issue shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The ground raised by the assessee is allowed for statistical purposes.

15. Ground of appeal No.5 relates to the unexplained cash receipts of Rs.51,80,000/-.

15.1 The facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that as per written Page No 7 of Annexure A/PMB/O1 (pages I to 58) seized from the residence of the assessee, an amount of Rs 51,80,000/- is received by the assessee on 13/05/2011. He, therefore, asked the assessee to explain as to why the cash receipts of Rs.51,80,000/- should not be brought to tax in his hand for A.Y.2012-13. According to the Assessing Officer, the

assessee failed to offer any satisfactory reply. He noted that the assessee during the course of search action had declared Rs 15 crores as additional income for different assessment years vide his statement recorded u/s 132(4) on 20-11-2014& resumed on 21-11-2014. The above additional income of Rs 15,00,00,000/- was once again admitted by the assessee vide his explanation submitted to the DDIT(Inv) Unit 1|(1), Hyderabad which is specifically mentioned at para 6.16 of the said explanation. In view of the above, the Assessing Officer made addition of the cash receipts of Rs. 51,80,000/- as his undisclosed income and brought to tax.

16. Before the learned CIT (A), the assessee submitted that no such amount was received at that point of time and further the receipts do not relate the assessee. It was submitted that this seized paper is not in handwriting of the assessee and no signature of the assessee is there on the paper. Since this is a dumb document without any real value, therefore, the Assessing Officer was not justified in making the addition. Without prejudice to the above, it was submitted that if the same is considered as a receipt and a payment, then the amount was received first as per the paper and repaid later. In those circumstances, such an amount cannot form part of the income of the assessee. It was accordingly argued that the addition of Rs.51,80,000/-is uncalled for.

16.1 However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee. After obtaining a remand report from the Assessing Officer and rejoinder of the assessee to such remand report, he sustained the addition made by the Assessing Officer on the ground that after a period of two years

from the date of search till the date of assessment proceedings, the assessee could not offer any satisfactory explanation and the assessee during the course of search had himself declared additional income of Rs.15.00 crores.

16.2 It is the submission of the learned Counsel for the assessee that it is not an un-accounted receipts but the same is on account of sale of land and the assessee has claimed such receipt as exempt income. Further, in absence of maintenance of any books of account by the assessee no addition u/s 68 can be made.

17. The learned Counsel for the assessee drew the attention of the Bench to Page No.2 of the Paper Book where a copy of the seized paper is placed. He submitted that a perusal of the same would show that this is the a/c of the assessee Shri Puajala Mahesh Babu as on 31.5.2011 with Shri T. Jangaiah. He submitted that the totaling of the first 3 entries comes to Rs.51,80,000/- out of which Rs.15,90,000 represents cheque receipts. The fourth entry is return of cheque against payment of cash. The balance amount of Rs.36,80,000/- after deducting the amount of Rs.15.00 lakhs received in cheque from the total of Rs.51,80,000/- was repaid on 28.06.2011 and 13.6.2011. He submitted that the assessee does not maintain any books of account and therefore, the provisions of section 68 have no application. Further, the assessee did not make any investment in any of the asset with this amount nor paid the same into bank account. Therefore, provisions of section 69 are also not applicable. He submitted that since the amount was received and repaid during the year as per the seized document, therefore, in view of the provisions of section 132(4) of the I.T. Act, the entries

made in the seized documents are reliable evidence. Therefore, no addition should have made on the basis of the seized material itself. He accordingly submitted that since the loan amounts were taken and repaid during the year itself, no addition is called for. Further, there is no evidence to show that the amount represents the income of the assessee.

18. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that even after a period of 2 years from the date of search, the assessee was unable to submit the explanation before the Assessing Officer. The assessee himself had admitted during the course of search regarding the undisclosed income of Rs.15 crores and he himself has computed the manner of such additional income. Therefore, the order of the learned CIT (A) is fully justified on this issue.

19. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.51,80,000/- on the basis of the seized documents (Page No.7 of the Annexure A/PM/01 (Pages 1 to 58) of the seized material. The reason for making the above addition is that the assessee failed to offer any satisfactory explanation and assessee himself had declared additional income of Rs.15.00 crores in the statement recorded u/s 132(4) of the I.T. Act. We find the learned CIT (A) upheld the action of the Assessing Officer. It is the submission of the learned Counsel for the assessee that as per the seized document, the assessee has received an amount of Rs.36,80,000/- in cash, Rs.15,90,000/- in cheque and amount of Rs.15,00,000/- was returned by cheque and the cash amounts were returned during

the same year. Therefore, no addition is called for. We find some force in the above arguments of the learned Counsel for the assessee. As mentioned earlier in the preceding paragraphs, an admission is an importance piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect. A perusal of the seized document placed at page 2 of the Paper Book clearly shows that this is the a/c of Shri Pujala Mahesh Babu as on 31.5.2011 with Shri T. Jangaiah. The total of the first three entries i.e., Rs.15,90,000/-, Rs.30,00,000 and Rs.5,00,000/- comes to Rs.51,86,000). The first amount is again received by cheque, whereas the subsequent entries are received in cash. Further, the fourth entry shows that an amount of Rs.15,00,000 was returned by cheque and other amounts were returned by cash. Thus, the account is squared up during the year itself. Further, the assessee does not maintain any books of account. Therefore, the addition of the same u/s 68 in our opinion, is not called for. However, when the assessee is undertaking certain transactions with one Shri T. Jangaiah and he was engaged in the business of real estate therefore, he must have earned some income. Since the total amount of receipts including the cheque receipt is amounting to Rs.51,80,000/- therefore, profit @ 10% of the addition of Rs.51,80,000/- as against Rs.51,80,000/- made by the Assessing Officer and sustained by the learned CIT (A), in our opinion, will meet the ends of justice. We hold and direct accordingly. Ground of appeal No.5 raised by the assessee is accordingly partly allowed.

20. Ground of appeal No.5 relates to the order of the learned CIT (A) in confirming the addition of Rs.25,87,000/- made by the Assessing Officer.

20.1 This ground of appeal consists of two additions namely Rs.5,32,500/- and Rs.20,54,500/- respectively. So far as the addition of Rs.5,32,500/- is concerned, the Assessing Officer during the course of assessment proceedings noted that as per the Sale Deed dated 8-12-2011 mentioned at para 8 of his order, the assessee has purchased land situated at Indrakaran Village, Sangareddy Mandal, Medak Distt. vide Reg Doc No 5964/2011 dated 10-6-2011 and Reg Doc No 8097/2011 dated 30-7-2011 at cost of Rs 3.82,500/- & Rs 1,50,000/- respectively Since the source of such investments as per the sale deeds were not explained, the Assessing Officer made addition of the same to the total income of the assessee.

21. So far as the addition of Rs.20,54,000/- is concerned, the Assessing Officer noted that the assessee has purchased land situated at Indrakaran Village, Sangareddy Mandal Medak during the year; the details of which are as under:

S.No	Date of purchase	Acres	Regn.No	Purchase amount
1	13.12.2011	3.00	12356/11	4,50,000
2	10.06.2011	2.22	5964/11	3,82,500
3	30.07.2011	7.03	8098/11	10,62,000/- (Assessee's share is only Rs.5,31,000/-)
4	5.11.2011	1.29	10442/11	2,59,000
5	17.06.2011	1.35	6267/11	2,82,000
6	30.07.2011	1.00	8097/11	1,50,000
	Total			20,54,500/-

22. He noted that the assessee was unable to explain the source of the amount of investments. Hence, he added Rs.20,54,500/- to the total income of the assessee as unexplained investments.

23. In appeal, the learned CIT (A) confirmed both the additions made by the Assessing Officer by observing as under:

*9.5 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. It is seen that in spite of repeated and sufficient opportunities having been given during the course of search proceedings as well as during the course of assessment proceedings, the assessee and his AR did not avail of the same, for reasons best known to them. Now, during the course of appellate proceedings, the assessee's AR has tried to explain the investment of Rs.5,32,000/- in land by stating that the said investment was made in the preceding year. However, as pointed out by the Assessing Officer, the consideration paid for the said lands was in cash and no dates are mentioned in the relevant sale deeds regarding the payment of consideration in cash. The assessee's AR has been unable to correlate the payments made with his claim that the said payments have been reflected in the preceding year. When confronted with this fact, the AR has changed his stand, and is now claiming that the consideration was paid out or the amount available with the assessee out of sale of property situated at Indrakaran Village. This change of stance repeatedly is itself sufficient to show that all these explanations being advanced by the appellant's AR are afterthoughts, which have not been substantiated by furnishing any documentary evidences. The explanations advanced are therefore found to be unacceptable, and the addition made by the Assessing Officer is confirmed. As regards the second addition or Unexplained investment in land of Rs.20,54,500/- made by the Assessing Officer, no explanation has been advanced by the appellant's AR. The sources of both the investments being therefore unexplained, the additions made by the Assessing Officer are sustained, and all grounds related to this issue are DISMISSED".*

24. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

25. The learned Counsel for the assessee submitted that the assessee in the return of income has offered capital gain of Rs.1,00,23,970/- and claimed the same as exempt. Further, the Assessing Officer noticed the receipts from various persons and therefore, he is not justified in making the addition on account of payments of Rs.25,87,000/-. He accordingly submitted that once the assessee has purchased the land which were sold and the income was also offered as exempt income being sale of agricultural land, no further addition is called for.

26. The learned DR, on the other hand, strongly relied on the order of the learned CIT (A).

27. We have considered the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.5,32,500/- and Rs.20,54,500/- respectively being explained investment in lands at Indrakaran Village on the ground that the assessee was unable to explain the source of the above investments. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue. Admittedly, the assessee could not explain the source of such investment. Further, as mentioned earlier, this land was purchased during the year itself and the onus was on the assessee to explain the source of such investment. Merely stating that the assessee has sufficient funds will not absolve the assessee from his responsibilities especially when no cash flow statement was filed to explain the availability of funds and the assessee is also not maintaining any books of account. In this view of the matter and in view of the detailed reason given by the CIT (A) while sustaining the addition made by the Assessing Officer, we do not find any infirmity in the order of the learned CIT (A) on this issue. Accordingly, ground of appeal No.6 is dismissed.

28. Ground of appeal No.7 relates to levy of interest under section 234A(3) and 234B(3) of the I.T. Act which are mandatory



and consequential in nature. Accordingly, this ground is dismissed.

29. In the result, appeal in ITA No.132/Hyd/2018 for the A.Y 2012-13 is partly allowed.

**ITA No.133/Hyd/2019 – A.Y 2013-14 (Assessee).**

30. The grounds raised by the assessee for A.Y 2013-14 are as under:

*“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

*2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in initiating the proceedings u/s 153A of the I.T. Act inspite of the fact that search was not contemplated in the case of the appellant.*

*3. The learned Commissioner of Income-Tax (Appeals) erred in not accepting the submissions made on the mere ground that there was a retraction after a long period. Instead, the learned Commissioner of Income-Tax (Appeals) ought to have considered the real facts and ought to have seen that the receipts were properly explained.*

*4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in making addition of Rs.21,00,000 on the ground that it represents unexplained cash and other receipts.*

*5. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in taxing the amounts of W Rs.81,25,000/-; Rs.56,00,000/- on the ground that they represent unaccounted receipts.*

*6. The learned Commissioner of Income-Tax (Appeals) erred in making additions of Rs.12 lakhs, Rs.100 lakhs and Rs.49.90 lakhs on the ground that they represent unaccounted expenditure.*

*7. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the Assessing officer accepted that there were receipts and having accepted that there were receipts, the Assessing officer and the learned Commissioner of Income-Tax (Appeals) ought not to have held that the expenditure is not properly explained.*

8. *he learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in making addition of Rs.41,84,550/- without considering the fact that the said amount represents unexplained agricultural income.*

9. *The learned Commissioner of Income-Tax (Appeals) ought to have directed to delete the entire capital gain addition of Rs.1,52,25,705/-.*

10 *The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of interest u/s 234A(3) and 234B(3) of the I.T. Act.*

11. *Any other ground that may be urged at the time of hearing”.*

**ITA No.126/Hyd/2019 – A.Y 2013-14 (Revenue) A.Y 2013-14**

31. The ground raised by the Revenue are as under:

*“1. The Id.CIT(A) is not justified in facts and in law in deleting the addition made by the assessing officer U/s. 68 of the IT Act.*

*2. The Id.CIT(A) is not justified in facts and in law in deleting the addition made on account of cash deposits ignoring the fact that the assessee has not submitted the details of bank accounts and even failed to prove the sources for such deposits.*

*3. Id.CIT(A) is. not justified in facts and in law in allowing the expenditure of Rs. 1,48,00,000/ relying on the seized document vide page no-51 A/PMB/06, having confirmed the addition on account of unaccounted receipts of Rs. 1,48,00,000/- relying on the same seized material.*

*4. The appellant craves leave to amend or alter any ground(s) or add a new ground which may be necessary”.*

32. Ground of appeal No.1, 3 & 11 by the assessee being general in nature are dismissed.

33. In Ground of appeal No.2, the assessee has challenged the validity of 153A proceedings.

33.1 After hearing both the sides, we find the above ground is identical to the ground of appeal No.2 in ITA No.132/Hyd/2018 for the A.Y 2012-13. We have already decided the issue raised by the assessee and the ground raised by the assessee has been

dismissed. Following similar reasonings, this ground raised by the assessee is dismissed.

34. Ground of Appeal No.4 relates to the order of the learned CIT (A) in confirming the addition of Rs.26.00 lakhs made by the Assessing Officer.

34.1 Facts of the case in brief are that the Assessing Officer during the course of assessment proceedings noted that Annexure A/PMB/06 is a Black Diary of SBI General Insurance containing written pages numbered from 01 to 51 which was impounded from the PMB premises of the assessee. As per Page No 49 of the above impounded Annexure, the assessee has received Rs.33,50,000- from Sri.M.Ranga Reddy on different dates i.e., Rs 28,50,000/- by cash & Rs 5 lakhs by cheque. When confronted, the assessee had no reply. He noted that out of the total Receipts of Rs.33,50,000/-, an amount of Rs.21,00,000/- relates to F.Y.2012-13 and the balance of Rs.12,50,000/- relates to F.Y.2013-14. Hence, he treated the receipts of Rs.21,00,000/- (cash Rs 16 lakhs & cheque Rs 5 lakhs) pertaining to this year as his undisclosed income in absence of satisfactory explanation and brought to tax for A.Y.2013-14. While doing so, he noted that the assessee during the course of search action had declared Rs 15 crores as additional income for different assessment years vide his statement recorded u/s 132(4) on 20-11-2014 & resumed on 21-11-2014. The above additional income was once again admitted by the assessee vide his explanation submitted before the DDIT(Inv) Unit II(1). Hyderabad specifically mentioned at para 13.14 of the said explanation.

35. Before the learned CIT (A), it was submitted that the assessee did not maintain any books of account and the amounts are not credited in the books of account. Therefore, provisions of section 68 are not applicable and the addition of Rs.21.00 lakhs should be deleted. It was further submitted that the evidence on record clearly indicates that the amount was received from Shri M. Ranga Reddy who has given the above amount to the assessee for acquisition of a suitable property. He had paid certain amount by cheque and certain amount through cash which were returned. It was argued that the amount paid by Shri Ranga Reddy did not represent the income of the assessee and therefore, no addition is called for.

36. Referring to the seized material, it was submitted that the contention of the assessee is supported by the entries in the seized material. Referring to the provisions of section 132(4A) it was submitted that the contents of the seized material are to be considered as to be true and affidavit of Shri Ranga Reddy also supports the statement of the assessee.

37. Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report on this issue and after considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report from the Assessing Officer, he upheld the action of the Assessing Officer by observing as under:

*“2.5 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. The case records and the seized material have also been perused. It is seen that during the search and seizure proceedings, the assessee had admitted Rs.15 crores as additional income in the statement recorded u/s.132(4). He had filed an Affidavit to this effect before the Investigation wing, and he had even submitted as to how he had arrived at additional income with reference to the seized material. The*

*Return of Income in response to notice u/s.153(A) was filed on 21.11.2016, whereas the search was conducted on 20.11.2014. No proper submissions were made before the Assessing Officer, who, based on seized material, made the additions. It is, therefore, seen that the assessee has taken two years to file the return, and even thereafter, did not furnish any explanation before the Assessing Officer during the course of assessment proceedings. Moreover, the amount in question was worked out by the assessee himself as his Undisclosed Income in the written submissions filed by him before DDIT(Inv). The conclusion therefore cannot be escaped that the explanation now being given is merely an afterthought, which, moreover, is not substantiated by any evidence seized during the course of search. As already pointed out in Para 5 above, no petition for admission of additional evidence has been filed by the assessee/appellant, and the Assessing Officer has certified that the explanation now being given was not furnished either before the DDIT(Inv) during the course of search proceedings or before the Assessing Officer during the course of assessment proceedings. The claim made, being unsubstantiated by any evidence, is therefore, found to be unacceptable and the addition made by the Assessing Officer is confirmed. All grounds related to this issue are DISMISSED”.*

38. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

39. The learned Counsel for the assessee submitted that the Assessing Officer made the addition by relying on the entries in the seized material, copy of which is placed at Page 1 of the Paper Book. He submitted that on 27.2.2013 the assessee received Rs.21 lakhs from Shri M. Ranga Reddy out of which an amount of Rs.15 lakhs was received through cheques and Rs.1 lakhs was received from Shri Ranjit. He submitted that Shri M. Ranga Reddy paid the amount for acquisition of a suitable property and as the required plot was not located, the amount was returned back. He submitted that the fact that the amount was received from Shri M. Ranga Reddy through cheque is confirmed by the entries in the seized documents itself. Further, the assessee does not maintain any books of account and the amount of Rs.15.00 lakhs was also not recorded in his books.

Under these circumstances, neither the provisions of section 68 nor the provisions of section 69 are applicable. He submitted that the said amount was never received as the income of the assessee and the seized material also does not provide any such information. Therefore, the amount cannot be added and hence should be deleted.

40. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

41. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.21.00 lakhs on the ground that page No.49 of the impugned Annexure shows that the assessee has received an amount of Rs.33,50,000/- from Shri Ranga Reddy on different dates out of which an amount of Rs.28,50,000/- was received in cash and Rs.5.00 lakhs by cheque. Since the amount of Rs.21.00 lakhs relates to the financial year 2012-13, the Assessing Officer made addition of the same to the total income of the assessee in absence of satisfactory explanation by the assessee. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that out of the above amount of Rs.21.00 lakhs an amount of Rs.15.00 lakhs was received through cheques and an amount of Rs.1 lakhs was received from Shri Ranjit. It is his submission that the amount was received from Mr. M. Ranga Reddy for purchase of a suitable plot which could not materialize and he was subsequently given

back the money. Since the assessee does not maintain any books of account and these are not recorded in any books of account, therefore, no addition can be made.

41.1 We find some force in the above argument of the learned Counsel for the assessee that the entire amount cannot be added to the total income of the assessee. A perusal of the seized document, copy of which is placed at Page 1 of the Paper Book shows that there are certain receipts and payments in the name of Mr. Ranga Reddy, the total of which comes to Rs.33.50 lakhs. Further, out of the above amount, amount of Rs.21.00 lakhs pertain to this A.Y. Out of the above amount of Rs.21.00 lakhs, an amount of Rs.15.00 lakhs has been received in the form of cheque and Rs.1 lakh was received through one Mr. Ranjit and Rs.5 lakhs received in the form of cash. Since the assessee is involved in the real estate business and the entries in the books of account do not indicate whether it is in the nature of money received for purchase of land or loan etc., and the assessee has not declared any income from business, therefore, considering the totality of the facts of the case, we are of the considered opinion that the adoption of profit rate at 10% on the amount of Rs.21.00 lakhs will meet the ends of justice. We hold and direct accordingly. The ground raised by the assessee is accordingly partly allowed.

42. In Ground of appeal No.5, the assessee has challenged the order of the learned CIT (A) in confirming the addition of Rs.81,25,000/- and Rs.56 lakhs respectively on the ground that they represent unaccounted receipts.

43. Fact of the case in brief are that the Assessing Officer during the course of the assessment proceedings noted that Annexure APMB/06 is a Black Diary of SBI General Insurance containing written pages numbered from 01 to 21 which was impounded from the business premises of the assessee. As per Page No.46 of the above impounded Annexure, the assessee has received Rs.81,25, 000/- under the head Tulsi Bhavani Nagar, Chengicherla during the Financial Year 2012-13. When confronted, the assessee had no reply. Hence, the amount of Rs 81,25,000/- was brought to tax in the hands of the assessee as his undisclosed income.

43.1 The Assessing Officer similarly noted that as per Para 41 of the above impounded annexure, the assessee has received an amount of Rs.77,00,000/- under the head "Tulsi Bhavani Nagar, Chengicherla" during financial year 2012-13 (Rs.56.00 lakhs) and Rs.21,00,000/- (financial year 2013-14). In absence of any satisfactory reply, the Assessing Officer made addition of the same to the total income of the assessee. While doing so he noted that the assessee, during the course of search action had declared Rs 15 crores as additional income for different assessment years vide his statement recorded u/s 132(4) on 20-11-2014& resumed on 21-11-2014 The above income was once again admitted by the assessee vide his explanation submitted to the DDIT(Inv) Unit II(1), Hyderabad which is specifically mentioned at para 13.13 of the said explanation.

44. So far as the addition of Rs.81,25,000/- is concerned, it was submitted before the CIT (A) that the Assessing Officer referred to the Annexure A/PMB/6 which contains that the assessee has spent an amount of Rs.81,25,000/- for which the



details are not available. It was submitted that the headnote to the details indicates that the amount was paid towards Tulsi Bhavani Nagar, i.e., Chengicherla venture which are one and the same. Therefore, the expenditure mentioned at page No.46 is part of the Page No.51 of the Paper Book. It was submitted that At page No.46, A/PMB/06 the payment to Sri Sham Singh was noted on 27.05.2012 at Rs.25,00,000/-. Sri Sham Singh is the husband of one of the agreement holders Smt.K.Indira Bai. Sri Sham Singh also received an amount of Rs.5 lakhs on 11.08.2012. The total amount paid at the time of agreement is noted at Rs.33 lakhs at page No.51. It was argued that the amounts were paid by the assessee to his partners Sri K.Gopal, Sri K.Chandar and others. They, in turn, incurred the expenditure. The nature of expenditure is mentioned at page No.46 whereas the name of the person receiving the amount is noted at page No.51. The total amount payable for the land is Rs.2,38,00,000/- and 50% of the assessee's share works out to Rs.1,19,00,000/-. Besides, the amounts paid for conversion charges of Rs.30,000/, media and paper of Rs.3,06,000/-, nala fee of Rs.3,50,000/-, registration charges of Rs.16,00,000/- DLPO of Rs.4,00,000/-, development of Rs.2,50,000/; the aggregate of the amount would be Rs.1,48,36,000/- and the amount mentioned at page No.51 is Rs.1,48,50,000/-. This amount of Rs.1,48,50,000/- tallies with the payments to be made to the owners and the expenditure incurred on the land. The same nature of expenditure is at Page No.46 also. Therefore, the amount of Rs.81,25,000/- is a part of Rs.1,48,50,000/- and cannot be added separately as the amount of Rs.1,48,50,000/- is separately considered. In the statement of short term capital gain the assessee claimed expenditure at Rs.1,52,25,705/-. This almost tallies with the amounts mentioned in page 51 of Rs.1,48,50,000/-, This is also an indicator that the

amount of Rs.81,25,000/- is not separate and not in addition to Rs.1,48,50,000/- but it is a part of the said amount.

45. So far as Rs.56.00 lakhs is concerned, it was submitted that According to the Assessing Officer, page No.41 Annexure A/PMB/06 indicates receipt of Rs.56 lakhs which is from the venture Tulasi Bhavani Nagar. It was argued that Tulasi Bhavani Nagar is the name of the Chengicherla venture. The assessee admitted sale consideration of Rs.1,74,33,695/-in the return of income filed by him. The amount of Rs.77 lakhs is a part of the said amount. Therefore, the Assessing Officer is not justified in making a separate addition of Rs.56 lakhs pertaining to this year when the assessed income admitted includes short term capital gain.

46. Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such report, he sustained the addition. While doing so, he noted that the amounts in question have been disclosed by the assessee himself in his written submission made before the DDIT (Inv.) and the assessee himself has worked out the undisclosed income. The assessee had offered the additional income of Rs.15.00 lakhs in his statement recorded u/s 132(4) of the Act and had also filed an affidavit to this effect. Therefore, retracting after a long period of time from the offer made earlier in the 13(2)4 statement followed by an affidavit is not a valid retraction. Further, the assessee despite being given sufficient opportunity during the course of search proceeding as well as the assessment proceedings, could not explain such unaccounted receipts which the assessee is now

filing during the appeal proceedings. He accordingly sustained the addition made by the Assessing Officer of the two amounts.

46.1 Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

47. The learned Counsel for the assessee submitted that the seized document, copy of which is placed at Page No.3 of the paper book, shows that the amount of Rs.81,25,000/- consists of various entries and mentions the name of Tulsi Bhavani Nagar Chengicherla. He submitted that the entries represent payments towards expenditure incurred for the property in Tulsi Bhavani Nagar. Referring to page 4 of the Paper Book, he submitted that here also the various entries totaling to Rs.77 lakhs mentioned as "Received accounts from Tulsi Bhavani Nagar". Out of the above Rs.77.00 lakhs, an amount of Rs.56.00 lakhs relate to A.Y 2013-14. He accordingly, submitted that the Assessing Officer without appreciating the seized material made an addition of Rs.81,25,000/- as well as Rs.56.00 lakhs i.e. both receipts and payments relating to the same period. He submitted that the learned CIT (A) without considering the seized material sustained the addition made by the Assessing Officer which is not correct. He submitted that the assessee had offered income from Chengicherla at Rs.22,07,990/- in the return of income filed. The assessee has admitted receipt of Rs.1,74,33,695/- and admitted the cost of acquisition at Rs.1,52,25,705/-. The receipts offered to tax at Rs.1,74,33,695/- includes the receipts appearing on the seized material at Page 4 of the Paper Book i.e. Rs.77.00 lakhs. Similarly, the expenditure claimed at Rs.1,52,25,705/- includes the payments appearing on the seized material at Page No.3 of the Paper Book amounting to Rs.81,25,000/-. Therefore, once entire

receipts and payments are explained, the Assessing Officer could not have made any addition and the learned CIT (A) is equally not justified in sustaining the addition.

48. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A). He submitted that despite sufficient opportunities granted by the Assessing Officer as well as the learned CIT (A), the assessee was not able to substantiate the claim which is now being made before the Tribunal. Therefore, the order of the learned CIT (A) should be upheld and the ground raised by the assessee should be dismissed.

49. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case on the basis of entries at Page No.46 of the Annexure A/PMB/6 and page No.41 of Annexure A-PMB/6 made addition of Rs.81,25,000/- and Rs.56 lakhs respectively on account of undisclosed receipts under the head "Tulsi Bhavani Nagar". We find the learned CIT (A) upheld the above two additions made by the Assessing Officer on the ground that the assessee had made declaration before the Investigation Wing in the statement recorded u/s 132(4) amounting to Rs.15.00 crores and filed affidavit to this effect before the Inv.Wing and therefore, he cannot retract it after a period of 2 years which cannot be considered as a valid retraction within reasonable time. Further the assessee neither during the course of search nor during the course of assessment proceedings could explain the nature of those entries in the seized papers. It is the submission

of the learned Counsel for the assessee that he has already offered the income from land at Chengicherla to tax. Further, the seized documents contain both the receipts and payments and the Assessing Officer cannot make addition of both receipts and expenditure.

50 We find some force in the above arguments of the learned Counsel for the assessee. A perusal of the seized document relating to the amount of Rs.81,25,000/- which is placed at Page 3 of the Paper Book shows the narration "Tulsi Bhavani Nagar, Chengicherla". It gives the dates, amounts and name of the person to whom the payments have been made. Similarly, the document relating to Rs.77,00,000/- copy of which is placed at page 4 of the Paper Book, shows the total amount received from Tulsi Bhavani Nagar and out of the amount of Rs.77.00 lakhs, the amount of Rs.56.00 lakhs relates to the impugned A.Y. i.e. A.Y 2013-14. A perusal of the computation statement filed along with the return of income shows that the assessee has declared an amount of Rs.22,07,990/- as short term capital gain which has been accepted by the Assessing Officer. We, therefore, find merit in the submission of the learned Counsel for the assessee that the Assessing Officer cannot make the addition of both the receipts and payments. If the amount of Rs.81,25,000/- is considered as expenditure and Rs.56.00 lakhs as receipts, then the difference comes to Rs.25,25,000/-. Since the assessee has already disclosed an amount of Rs.22,07,990/- as profit from the said project, therefore, in our opinion, the addition of the difference amount being Rs.3,17,010/- under the fact and circumstances of the case can only be made which will meet the ends of justice. We, therefore, modify the order of the learned CIT (A) on this issue and direct the Assessing Officer to

restrict the addition to Rs.3,17,010/- as against addition of Rs.81,25,000/- plus Rs.56,00,000/-. The ground raised by the assessee is accordingly partly allowed.

51. In ground of appeal No.6, the assessee has challenged the order of the learned CIT (A) in sustaining the addition of Rs.12.00 lakhs, Rs.10.00 lakhs (wrongly typed as Rs.100,00,000) and Rs.49,05,000/- respectively on account of unaccounted expenditure.

51.1 Facts of the case, in brief, are that the Assessing Officer noted that Annexure A/PMB/06 is a Black Diary of SBI General Insurance containing written pages numbered from 01 to 51 which was impounded from the PMB premises of the assessee. As per Page No 19 of the above impounded Annexure, the assessee has incurred an expenditure of Rs 12,00,000/- under the head Balapur on 20 02.2013. Similarly Page No.50 of the above annexure contains that the assessee has incurred expenditure of Rs.10.00 lakhs during the financial year 2012-13. When the assessee was asked to furnish the sources of the said expenditure with supporting evidence, the assessee failed to furnish any explanation. Hence the amount of Rs 12,00,000/- and Rs.10,00,000/- were brought to tax in the hands of the assessee as his unaccounted expenditure. The Assessing Officer further noted that as per Page No 48 of the impounded Annexure, the assessee has incurred an expenditure of Rs 49 90,000/- under the head Sai Krishna Enclave, Marpelly. Gatkeswar during the Financial Year 2012-13. When the assessee was asked to substantiate the sources of the said expenditure with supporting evidence the assessee failed to furnish any evidence. Hence, the

amount of Rs 49,90,000/- was also brought to tax in the hands of the assessee as his unaccounted expenditure.

52. Before the learned CIT (A), the assessee filed elaborate submission. So far as the addition of Rs.12.00 lakhs is concerned it was submitted that the amounts were paid towards Balapur property admeasuring 5 acres 15 guntas. This amount was originally received from Sri Gopal Goud who is one of the partners in the venture at Balapur. The Balapur venture could not be proceeded with due to various reasons and the amount was returned. The said amount was repaid to Sri Gopal Goud. The information also shows that Rs.12 lakhs was paid on 20.07.2013. The Assessing Officer, by mistake, mentioned the date as 20.02.2013. It does not relate to the year under consideration. Further, this is an amount received from Sri Gopal Goud and, therefore, paid back to him.

53. So far as addition of Rs.10,00,000/- is concerned, it was submitted that the payments made to Sri Chary of Rs.8.00,000/- and others of Rs.2,00,000/- represent the expenditure on woodwork. This amount is also from out of the withdrawals made from the Andhra Bank account. It was argued that the assessee was also in receipt of cash from the tenants towards rent. These amounts were available with the appellant to make payment of Rs.10,00,000/-.

54. So far as the addition of Rs.49,00,000/- is concerned, it was submitted that the seized document at page No.48 shows the receipts from sale of plots of Akshaya Phase-II i.e. on 18.02.2013 and 25.03.2013 of Rs.33,00,000/-. Assessee also filed a copy of the agreement with Mrs. P.Ramanjamma, wife of Sri Sai

Reddy. It was argued that the assessee and four others together have acquired the property and the appellant was having 30% share. The said amount was incurred by receiving Rs.33 lakhs from sale of plots of Akshay Phase-II, rents and withdrawals from banks.

55. Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report from the Assessing Officer and rejoinder of the assessee to such remand report, the learned CIT (A) sustained the addition by observing as under:

*“10.5 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. The case records and the seized material have also been perused. Here again, it is seen that the amounts in question have been disclosed by the assessee himself in his written submissions made before the DDIT(Inv), and the assessee himself has worked out the undisclosed income and offered the same for taxation. It is seen that during the course of post-search proceedings, the assessee has been given ample opportunity and he has analyzed each and every seized record, and offered his explanation on the same. As discussed in detail in Para 9.5 above, the assessee had offered Rs.15 crores as additional income for various years in the statement recorded u/s.132(4), and had also filed an Affidavit to this effect before Investigation wing, which he retracted after a period of two years, which cannot be considered as retraction within 'reasonable time'.*

*In view of the discussion above, and considering the fact that sufficient opportunity has been given to the assessee/appellant during the course of search proceedings as well as during the course of assessment proceedings, and the assessee has chosen not to avail of the same, the explanations regarding the unaccounted expenditure which the assessee has tried to file during appellate proceedings, which are found to be unsubstantiated by any documentary evidence, are found to be unacceptable. The additions made by the Assessing Officer are therefore confirmed, and all the grounds related to this issue are DISMISSED”.*

56. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.



57. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) and filed the following written submission:

*“Ground Nos.6 are with regard to additions of Rs.12 lakhs, Rs.10 lakhs and Rs.49.90 lakhs. There is a mistake in typing the amount of Rs.100 lakhs. It is actually Rs.10,00,000/-*

*(i) With regard to Rs.49.90 lakhs, the same is at page No.2 of the paper book. It is with regard to Sai Krishna Enclave, Marepalli village Ghatkesar. It shows an expenditure of Rs.49.90 lakhs. The Assessing Officer has made addition of Rs.49.90 lakhs for want of sources for making these payments. In fact, the assessee has sufficient sources for making payments of Rs.49.90 lakh towards expenditure from sale of two properties i.e., sale consideration of Rs.1,74,33,695/- from two sale deeds on which the assessee has already offered capital gains of Rs.22,07,990/- after claiming Rs.1,52,25,705/-. Therefore, the assessee has fully explained the sources for the payments made by the assessee. Hence, no addition is warranted on this account.*

*(ii) With regard to the amount of Rs.12 lakhs, the Assessing Officer is of the view that in Balapur venture, the appellant incurred an expenditure of Rs.12 lakhs on 20.2.2013 which is at page No.7 of the paper book. It was actually incurred on 20.07.2013 and relates to the next assessment year and it does not relate to the assessment year under consideration. Therefore, no addition can be made for the impugned A.Y.2013-14.*

*(iii) The Assessing Officer made addition of Rs.10 lakhs as unaccounted expenditure based on the entries appearing on the seized material on page 1. It is submitted that the Assessing Officer is not correct to say that these payments as unaccounted expenditure because it is the seized material showing that the assessee has actually made the payments and the entire seized material pertains to the projects undertaken by the assessee and as such he cannot categorize these payments as unaccounted expenditure. This is especially, when the assessee has not been maintaining regular books of account, it cannot be said that the said payments are unaccounted. Further, the seized material should be considered in its entirety and as appearing thereon. The Assessing Officer cannot disbelieve certain part of the seized material when it comes to the payments and believes certain part of the seized material when it comes to receipts. Therefore, the addition of Rs.10 lakhs representing the payments made by the assessee cannot be made. Hence, the same need to be deleted”.*

58. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

59. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.12.00 lakhs, 10.00 lakhs and Rs.49.90 lakhs on the basis of the seized documents page Nos 19,50 and 48 of the Paper Book marked as Annexure A-PMB/06 respectively on the ground that as per the seized document, the assessee has incurred certain expenditure for which the assessee could not explain the source properly. We find the learned CIT (A) sustained the addition made by the Assessing Officer the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that he had sufficient source for making the expenditure of Rs.49.90 lakhs which is out of sale consideration of Rs.1,74,33,695/- from the two sale deeds for which the assessee had already offered to tax the capital gain for Rs.22,07,990/-. So far as Rs.12.00 lakhs is concerned, it is his submission that the seized document copy of which is placed at 7 of the Paper Book clearly shows that the amount of Rs.12.00 lakhs was paid on 20.7.2013 and therefore, it relates to the financial year 2013-14 relevant to A.Y 2014-15. Therefore, no addition on this account be made during the A.Y.

60. So far as the addition of Rs.10.00 lakhs as unaccounted expenditure is concerned, it is his submission that these are not unaccounted expenditure because the seized material shows that the assessee has actually made the payments and the entry in the seized material pertains to the project undertaken by the assessee. According to him, the seized

materials are to be considered as a whole and the Assessing Officer cannot pick and choose certain entries that suits him.

61. We find some force in the above argument of the learned Counsel for the assessee. So far as Rs.12.00 lakhs is concerned, the seized document copy of which is placed at Page No.7 of the Paper Book clearly shows that the same is paid on 20.07.2013 and therefore, it does not pertain to this A.Y. The learned CIT (A) without verifying the fact has sustained the addition. Since the entry in the seized document clearly mentions the date as 20.07.2013 which pertains to A.Y 2014-15, therefore, the learned CIT (A) in our opinion, is not justified in sustaining the addition of Rs.12.00 lakhs in the A.Y 2013-14. Accordingly, the same is directed to be deleted.

62. So far as the addition of Rs.49,90,000/- is concerned, we find the same is based on seized document copy of which is placed at Page No.2 of the Paper Book. A perusal of the same shows Rs.49,90,000/- is written under Sai Krishna Envlave, Mar Palley, Ghatkesar. The first three entries of Rs.5 lakhs, Rs.2 lakhs and Rs.10,000/- do not have any dates. Therefore, it cannot be said that the above three entries totaling to Rs.7,10,000/- belong to this year. We, therefore, are of the opinion that out of Rs.49.90 lakhs, an amount of Rs.7,10,000/- cannot be considered as relating to this A.Y. So far as the balance amount of Rs.42,80,000/- is concerned, it is the submission of the learned Counsel for the assessee that he has sufficient sources for making payment. It is his alternate contention that the seized documents mention assessee's share at 30%. We, therefore, accept the alternate contention of the assessee that out of the remaining amount of Rs.42,80,000/-, only 30% of the same being the share

of the assessee as mentioned can be added which comes to Rs.12,84,000/-. So far as the addition of Rs.10,00,000/- is concerned, the learned Counsel for the assessee could not give any satisfactory explanation for which the same has to be sustained. We, therefore, set aside the order of the learned CIT (A) and direct the Assessing Officer to restrict the addition to Rs.22,84,000/- (i.e. Rs.12,84,000 + Rs.10,00,000) as against Rs.12,10,000, Rs.10,00,000/- and Rs.49,90,000/- respectively. The ground raised by the assessee is accordingly partly allowed.

63. Ground of appeal No.8 relates to the order of the learned CIT (A) in sustaining the addition of Rs.41,84,550/-.

63.1 Facts of the case, in brief, are that during the assessment proceedings the Assessing Officer noted that the assessee has claimed an amount of Rs 41,84,550/- as exempt agricultural income during the year. However, the assessee failed to substantiate his claim and no evidences were furnished in the form of purchase & sale deeds or other evidences even after giving numerous opportunities to the assessee. Hence the amount of Rs 41,84,550/- was held as income from undisclosed sources and added to the total income of the assessee.

64. Before the learned CIT (A) the assessee submitted that the amount of Rs.41,84,550/- does not represent the agricultural income but represents the sale of agricultural land of 10 acres 30 guntas which was claimed as exempt. The Assessing Officer was under the misapprehension that the assessee derived agricultural income of Rs.41,84,550/- and that he claimed exemption of the said agricultural income. It was argued that facts are that the assessee is the owner of agricultural land admeasuring 10 acres

30 guntas situated at Isnapur village. The said land was sold for a total consideration of Rs.41,84,550/-. The said lands were agricultural in nature. The assessee submitted a copy of the pattadar passbook, Google maps of Indrakaran Village which shows that this is agricultural land, Isnapur is beyond 8 KM from Hyderabad Municipal corporation and, therefore, the income derived on sale of the agricultural land is exempt from tax.

65. Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report from the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) sustained the addition by observing as under:

*“12.4 T have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. It is seen that the assessee purchased and sold the land in less than 13 months. There was no evidence of agricultural activity being carried out. Hence it does not satisfy the test laid down by the Supreme Court for treating certain receipts as received from sale of agricultural property and hence exempt. The addition made by the Assessing Officer is therefore sustained and all the grounds related to this issue are DISMISSED”.*

66. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

66.1 The learned Counsel for the assessee submitted that the assessee in the return of income admitted capital gain of Rs.41,84,550/- arising on sale of 10 acres 30 guntas of agricultural land and claimed the same as exempt u/s 10(14) of the I.T. Act. He submitted that the Assessing Officer without considering the claim of exemption of capital gain added the amount by presuming that the assessee admitted agricultural income from agricultural lands. He submitted that the Assessing Officer should have held that the agricultural land is not an asset

within the meaning of section 2(14) of the I.T. Act. Even the learned CIT (A) dismissed the ground raised by the assessee holding that there was no evidence of agricultural activities being carried out and therefore, he is not justified in sustaining the addition.

67. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT (A). He submitted that the assessee could not substantiate that he is carrying out any agricultural activities in the said land. Since the assessee purchased and sold the land in less than 13 months and there was no evidence of agricultural activities, therefore, the learned CIT(A) was fully justified in sustaining the addition.

68. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.41,84,550/- on the ground that the assessee has claimed the same as exempt agricultural income during the year and the assessee could not furnish evidence in the form of purchase and sale of agricultural produce, dates or other evidence even after giving numerous opportunities. We find the learned CIT (A) after calling for a remand report from the Assessing Officer and on the basis of submissions made before him sustained the addition made by the Assessing Officer, the reasons of which have already reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue. Even though the assessee has claimed the income of Rs.41,84,550/- as exempt agricultural income, however, either during appeal proceedings

or before us, the assessee could not substantiate with evidence that he was in fact carrying on agricultural activities. The learned CIT (A) while deciding the issue against the assessee has followed the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim vs. Commissioner Of Income-Tax, reported in 204 ITR 631 according to which mere mention of land as agricultural land in the revenue record is not sufficient for determining the true characteristics of the land i.e. agriculture or otherwise. Since the assessee in the instant case failed to substantiate with evidence to the satisfaction of the revenue authorities and to our satisfaction that the income so derived is on account of the agricultural land which was used for agricultural activity, therefore, the order of the learned CIT (A) in our opinion is fully justified. Accordingly, ground raised by the assessee is dismissed.

69. Ground of appeal No.9 by the assessee and Ground of appeal No.3 by the Revenue relate to the order of the learned CIT (A) in directing the Assessing Officer with certain directions to recompute the capital gain.

69.1 Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, noted that during the year the assessee has declared short term capital gain of Rs 22,07,990/- from sale of land at Chengicherla Ac 2.32 guntas & AcO.23 guntas. However, the assessee failed to substantiate his claim and no evidences were furnished even after giving numerous opportunities to the assessee. Hence an amount of Rs 1,52,25,705/- was held as income from undisclosed sources after reducing gain offered by assessee from sales consideration of

Rs 174,33,695/- i.e., (1,74,33,695-22,07,990) and added to the total income of the assessee.

70. Before the learned CIT (A) it was submitted that the assessee derived sale consideration of Rs.1,74,33,695/- which is not disputed by the appellant. Further, the Assessing Officer did not consider the cost of acquisition of the property which amounted to Rs.1,52,25,705-. It was argued that the Assessing Officer also made an addition of Rs.1,48,50,000/- representing the expenditure on the Chengicherla venture. In the circumstances, Assessing Officer is not justified in mentioning that the details of expenditure were not available with him. It was further submitted that the cost is already noted in the return of income filed. Page No.51 of the seized document clearly indicates that the appellant incurred an expenditure of Rs.1,48,50,000/- and, therefore the Assessing Officer is not justified in not allowing any expenditure in this regard.

71. The learned CIT (A) called for a remand report from the Assessing Officer based on the arguments advanced by the assessee and thereafter gave part relief to the assessee by observing as under:

*“13.4 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. The sale consideration of the property is Rs.1,74,33,695/-, which is not disputed by the Assessing Officer or by the appellant. The Assessing Officer has, however, chosen to tax the entire amount as the assessee's income, whereas the contention of the appellant is that the cost of acquisition of Rs.1,48,00,000/- is mentioned in the seized document at Pg.No.51 of A/PMB/06. The Assessing Officer has stated that the appellant had himself offered the said amount as additional income before the DDIT(Inv). If that be the case, the said amount has already been added by the Assessing Officer by way of a separate addition and making the same addition here would amount to double taxation of the same amount, which is unwarranted. The Assessing Officer is therefore directed to recompute the Capital Gain, after allowing deduction of said*



*amount. The appellant would get relief to that extent. The grounds related to this issue are therefore Partly Allowed”.*

72. Aggrieved with such order of the learned CIT (A), the assessee as well as the Revenue are in appeal before the Tribunal.

73. The learned Counsel for the assessee submitted that despite direction given by the learned CIT (A) on this issue to recompute the capital gain after considering the cost, the Assessing Officer has not passed any consequential order till now. Therefore, a direction may be given to the Assessing Officer to pass a consequential order. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer.

73.1 After hearing both sides, we do not find any infirmity in the order of the learned CIT (A) in directing the Assessing Officer to recompute the capital gain after reducing the cost of acquisition from the sale proceeds of Rs.1,74,33,695/-. The learned DR could not point out any error in the order of the learned CIT (A) on this issue. We, therefore, uphold the order of the learned CIT (A) and direct the Assessing Officer to recompute the capital gain after reducing the cost of acquisition from the sale proceeds after due verification. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee while deciding the issue. We hold and direct accordingly. Ground of appeal No.9 by the assessee and ground of appeal by the Revenue are accordingly allowed for statistical purposes.

74. Ground of appeal No.10 relates to relates to levy of interest under section 234A(3) and 234B(3) of the I.T. Act which are mandatory and consequential in nature. Accordingly, this ground is dismissed.

**ITA No.126/Hyd/2019 – A.Y 2013-14 (Revenue)**

75. Ground of appeal 1 & 2 raised by the revenue relates to the order of the learned CIT (A) in deleting the addition made by the Assessing Officer u/s 68 of the I.T. Act.

75.1 Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noticed from the Bank A/c filed by the assessee that the assessee has made cash deposit of Rs.17,77,000/- in the Bank A/c maintained with Kotak Mahindra Bank. On being confronted by the Assessing Officer to explain the source for these cash deposits, the assessee stated that these were business receipts. However, the Assessing Officer rejected the claim of the assessee on the ground that the assessee is neither able to substantiate his claim nor produce any evidence to indicate that these are business receipts. He accordingly made addition of Rs.17,77,000/- to the total income of the assessee.

76. Before the learned CIT (A), it was argued that additions u/s 68 and 69 of the I.T.Act can be made only when the assessee maintained regular books of account. For the year under consideration, the assessee did not maintain any books of account. It was argued that the assessee is in the business of real estate. The Income Tax Authorities conducted search and seizure operations at the premises of the appellant. The material available with the appellant were seized. The amounts received from various persons are noted in a Dairy. They are separately explained. The Assessing Officer, however, added all such receipts as the income of the appellant. There are certain expenditure items in the Dairy. These expenditure items also were added. The appellant is a co-owner or co-partner with various persons in various ventures. The

amounts received from the partners by the appellant are noted in the Dairy. Such amounts received are treated as the income of the appellant inspite of the fact that the amount was paid as the share of the partner. The Assessing Officer accepted the fact that several receipts were there in the seized material. Those receipts were available with the appellant till such time that they were returned to the partners. The Assessing Officer added those items as the income of the appellant and the appellant has submitted detailed explanation in respect of each of the receipt, The receipts added by the Assessing Officer aggregated to Rs.17,77,000/ -The Assessing Officer without considering such receipts added Rs.17,77,000/- deposited into the bank account.

77. Based on the arguments advanced by the assessee the learned CIT (A) called for a remand report from the Assessing Officer. The remand report was confronted to the assessee who filed his rejoinder. After considering the remand report of the Assessing Officer and the rejoinder of the assessee, the learned CIT (A) deleted the addition by observing as under:

*“7.5 have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. It is seen that the Assessing Officer has added all the receipts separately while completing the assessment, which are more than the amount of the cash deposit in the bank account. These additions made by the AO are separately dealt with in the subsequent paras of this order. It is also seen that the AO has also added business income of Rs.7,72,275/- which the assessee had shown in the original Return, but which he failed to include in the u/s.153A. The appellant has not raised any ground against the said addition. Since all the receipts and the business income is already taxed, no separate addition is warranted for deposits made in bank accounts. The addition made is therefore ordered to be deleted. The ground related to this issue is ALLOWED”.*

78 Aggrieved with order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

79. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.17,77,000/- being the cash deposit in the Bank A/c maintained with Kotak Mahindra Bank on the ground that the assessee could not substantiate with evidence to his satisfaction that these cash deposits were business receipts. We find the learned CIT (A) deleted the addition the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue. Since the assessee in the original return of income had declared business income of Rs.7,72,275/- and since all the receipts and the business income have already been taxed, therefore, we do not find any infirmity in the order of the learned CIT (A) in deleting the addition in absence of any contrary material brought to our notice. Accordingly, the order of the learned CIT (A) is upheld and the ground raised by the revenue is dismissed.

80. Ground of appeal No.2 raised by the Revenue being general in nature and dismissed.

81. In the result, appeal filed by the assessee is partly allowed for statistical purposes and the appeal; filed by the Revenue is dismissed.

**ITA No.134/Hyd/2019 – A.Y 2014-15**

82. The grounds raised by the assessee for A.Y 2014-15 read as under:

*“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

*2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in initiating the proceedings u/s 153A of the I.T. Act inspite of the fact that search was not contemplated in the case of the appellant.*

*3. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the retraction was made on good and sufficient grounds and each addition ought to have been considered by the learned Commissioner of Income-Tax (Appeals) based on the facts of each addition.*

*4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the additions made by the Assessing officer of Rs.12,50,000; Rs.94,50,000/- and Rs.2,89,38,000/-; Rs.1,55,00,000/- on the ground that they represent unexplained cash receipts.*

*5. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the said amounts were properly explained and a detailed explanation was filed before the learned Commissioner of Income-Tax (Appeals) explaining the sources for the receipt of the said amounts.*

*6. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in making addition on account of unaccounted expenditure of Rs.25 lakhs, Rs.25 lakhs; Rs.12.50 lakhs; Rs.12.50 lakhs; Rs. 12.50 lakhs; and Rs.12.50 lakhs without properly considering the explanation offered by the appellant. The learned Commissioner of Income-Tax (Appeals) ought to have seen that the appellant properly explained the source for each expenditure incurred and the learned Commissioner of Income-Tax (Appeals) ought to have held that the Assessing Officer is not justified in making such additions. (Appeals) erred in*

*7. The learned Commissioner of Income-Tax confirming the addition of Rs.21 lakhs on the ground that the said amount represents undisclosed receipt.*

*8. The learned Commissioner of Income-Tax (Appeals) erred in confirming the determination of the capital gain at Rs.78,11,904/- the detailed explanation submitted by the without considering appellant”.*

83. Ground of appeal No.1, 3 and 10 being general in nature are dismissed.

84. Ground of appeal No.2 is identical to ground of appeal No.2 in ITA No.132/Hyd/2018. We have already decided the issue and the ground raised by the assessee has been dismissed. Therefore, following similar reasoning, the ground raised by the assessee challenging the validity of initiation of proceedings u/s 153A is dismissed.

85. In ground of appeal No.4, the assessee has challenged the order of the learned CIT (A) in sustaining the additions of Rs.2,89,38,000/-, Rs.12,50,000/-, Rs.94,50,000/- and Rs.1,55,00,000/- respectively on the ground that they represent unexplained cash receipts.

86. So far as the addition of Rs.2,89,38,000/- is concerned, the fact of the case, in brief are that the Assessing Officer during the course of assessment proceedings noted that Annexure A/PMB/01 containing pages numbered from 01 to 58 was seized from the residence of the assessee. As per Page No.10 dated 11.05.2013 of Annexure A/PMB/01 the assessee has received cash amounting to Rs.2,89,38,000/- (Rs.1,06,44,000/- Rs.1,82,94,000/-) from different persons during the F. Y.2013-14. When confronted, the assessee could not give any satisfactory reply. Hence, the cash receipts of Rs.2,89,38,000/- were treated as undisclosed income and brought to tax.

87. So far as the addition of Rs.12,50,000/- is concerned, the Assessing Officer noted that As per Page No.49 of the above impounded Annexure, the assessee has received Rs.33,50,000/- from Sri.M.Ranga Reddy on different dates Rs 28,50,000/- by cash & Rs 5 lakhs by cheque When confronted, the assessee had

no reply. Out of the total Receipts of Rs.33,50,000/-, an amount of Rs.21,00,000/- relates to F. Y.2012-13 and the balance of Rs.12,50,000/- relates to Y.2013-14. Hence, the cash receipts of Rs.12,50,000/- was treated as undisclosed income and brought to tax for A. Y.2014-15.

88. So far as the addition of Rs.94,50,000/- is concerned, the Assessing Officer noted that as per Page No.30 of the above impounded Annexure, the assessee has received cash amounting to Rs. 94,50,000/- towards Ghatkesar Venture during the F.Y.2013-14. When confronted, the assessee did not offer any satisfactory reply. Hence, the receipts of Rs 94,50,000/- was treated as undisclosed income and brought to tax.

88.1 So far as the addition of Rs.1,55,00,000/- is concerned, the Assessing Officer noted that as per Page No.20 of the impounded Annexure, the assessee has received cash amounting to Rs.1,35,00,000/- from Sri. R. Brahmanna, Badupet during the F.Y.2013-14. The assessee has also received cash of Rs.20,00,000/- towards Chengicherla on 20.07.2013. When confronted, the assessee did not offer any satisfactory reply. Hence, the entire receipts of Rs.1,55,00,000/- was treated as his undisclosed income and brought to tax. While making the above addition, the Assessing Officer noted that assessee during the course of search action had declared Rs 15 crores as additional income for different assessment years vide his statement recorded u/s 132(4) on 20-11-2014 & resumed on 21-11-2014. The above income was once again admitted by the assessee vide his explanation submitted to the DDIT(Inv) Unit II (1), Hyderabad which is specifically mentioned at para 13.8 of the said explanation. As the assessee failed to offer any convincing reply at

the assessment proceedings, these amounts were brought to tax in the hands of the assessee.

89. Before the learned CIT (A), the assessee made elaborate arguments. So far as the addition of Rs.2,89,38,000/- is concerned, it was submitted that the total does not work out to Rs.2,89,38,000/-. The amounts appearing in the seized paper carries the progressive total showing the receipts at different points of time. Such final progressive total of the said receipts is Rs.1,82,94,000/- i.e., Rs.1,58,44,000 and 24,50,000. It was submitted that as per the said seized paper (Page No.10 of the Paper book) the first total of Rs.59,54,000/- represents receipts up to 11.5.2013; then, the second total of Rs.85,44,000/- includes Rs.59,54,000/; then the third such total of Rs.1,06,44,000/- includes Rs.85,44,000/; and then the total of Rs.1,58,44,000/- includes Rs.1,04,44,000/- and the final total of Rs.1,82,94,000/- includes Rs.1,58,44,000/- Therefore, in total, the seized paper shows the receipts of Rs.1,82,94,000/- only and not Rs.2,89,38,000/- as taken by the Assessing Officer. The Assessing Officer has wrongly added Rs.1,06,44,000/- to the final total of Rs.1,82,94,000/- and arrived at the figure of Rs.2,89,38,000/- which is wrong. The figure of Rs.2,89,38,000/- taken by the Assessing Officer included Rs.1,06,44,000/- twice. Therefore, the correct receipts in the seized paper are Rs.1,82,94,000/- only.

90. It was submitted that the said receipts of Rs.1,82,94,000/- represents the sale consideration received on sale of plots and the share of the assessee is 50%. Therefore, such share comes to Rs.91,47,000/-. It was argued that the assessee in the return of income for the impugned A.Y.2014-15 has adopted



sale consideration at Rs.99,42,558/- being 50% share in the project and after claiming the purchase cost of Rs.78,11,904/-, admitted capital gain of Rs.21,30,654/- since the income is more than the share of the appellant in the receipts appearing in the seized paper, therefore, no addition is warranted on this account.

91. So far as the addition of Rs.12,50,000/- is concerned, it was argued that the evidence in the seized documents show that amounts were received from Sri Ranga Reddy. The amounts are not credited in the books of the appellant. Therefore, the Assessing Officer is not justified in making addition of Rs.12,50,000/.

92. So far as the addition of Rs.94,50,000/- is concerned, it was argued that this payment of Rs.94,50,000/- relates to the previous year. It was submitted that the assessee proposed to enter into a venture at Ghatkeswar. Sri K.Gopal Goud was interested in joining the said venture. He paid the amount of Rs.94,50,000/- On receipt of the amount, the project was aborted and the entire amount was returned to Sri K.Gopal. The amount was neither recorded in the books of account of the appellant nor related to any venture which was undertaken by the appellant. The evidence also indicates that it relates to the Ghatakeswar venture and the receipt is from Sri K.Gopal. Therefore, the Assessing Officer is not justified in making addition of Rs.94,50,000/- on the presumption that the amount represent receipt.

93. So far as the addition of Rs.1,55,00,000/- is concerned, it was argued that a reference may be made to page No.21 which relates to the account of Sri R.Brahmanna. He is

having 20% share in Boduppall property. He paid an amount of Rs.2,25,00,000/- in the said venture. Out of the said amount, Rs.94 lakhs was received in cash from Sri R.Brahmanna. It clearly indicates that the amounts were paid by Sri Brahmanna which is also clear from the seized material that it relates to his share of 20% in Boduppall venture. All these facts clearly indicate that the amounts were neither received by the appellant nor paid by the appellant. They were paid by Sri R.Brahmanna for the venture towards his share. Therefore, the Assessing Officer is not justified in making any addition on this count. It can also be seen that the payments are made by Sri Brahmanna.

94. Based on the arguments advanced by the assessee, the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) upheld the addition made by the Assessing Officer on the ground that despite ample opportunities given by the Assessing Officer during the course of post search proceeding, the assessee could not substantiate the entries recorded in the seized documents. Further, the assessee during the course of assessment proceedings had himself worked out the undisclosed income and had offered an amount of Rs.15.00 crores as additional income for various years in the statement recorded u/s 132(4) of the Act. Therefore, retraction made by the assessee after two years being general and vague and not supported by any evidence is merely an afterthought and therefore, the Assessing Officer was justified in making the addition.

95. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

96. The learned Counsel for the assessee while explaining the above additions filed the following written submissions to explaining the entries recorded in the seized documents:

*"8. Ground Nos. 4 & 5. This is with regard to additions made of Rs.2,89,38,000/-, Rs.12,50,000/ 8. Rs. 94,50,00- and Rs.1,55,0,000/- on the ground that they represent 8. Ground Nos.4 & 5 This is with regard to additions made of Rs.2,89,38,000/ unexplained cash receipts. The Assessing Officer made addition of Rs.2,89,38,000/- on the ground that page 10 of Annexure A/PMB/01 shows receipts of Rs.2,89,38,000/-.*

*9. Firstly, the appellant submits that the total does not work out to Rs.2,89,38,000/-. The amounts appearing in the seized paper carries the progressive total showing the receipts at different points of time. Such final progressive total of the said receipts is Rs.1,82,94,000/-i.e. Rs.1,58,44,000 24,50,000. It can be seen from the said seized paper (Page No.10 of the Paper book) that the first total of Rs.59,54,000/- represent receipts up to 11.5.2013; then, the second total of Rs.85,44,000/- includes Rs.59,54,000/; then the third such total of Rs.1,06,44,000/- includes Rs.85,44,000/; and then the total of Rs.1,58,44,000/- includes Rs.1,04,44,000/- and the final total of Rs.1,82,94,000/- includes Rs,1,58,44,000/- Therefore, in total, the seized paper shows the receipts of Rs.1,82,94,000/-only and not Rs.2,89,38,000/- as taken by the Assessing Officer. The Assessing Officer has wrongly added Rs.1,06,44,000/- to the final total of Rs.1,82,94,000/- and arrived the figure of Rs.2,89,38,000/- which is wrong. The figure of Rs.2,89,38,000/- taken by the Assessing Officer included Rs.1,06,44,000/- twice. Therefore, the correct receipts in the seized paper are Rs.1,82,94,000/- only.*

*10. Secondly, the said receipts of Rs.1,82,94,000/- represents the sale consideration received on sale of plots Rs.91,47,000/-. The in Sai Krishna Enclave wherein the assessee's share is 50% only 1.e. appellant, in his return of income for the impugned A.Y.2014-15, adopted sale consideration at Rs.99,42,558/- being 50% share in the project and after claiming the purchase cost of Rs.78,11,904/-, admitted capital gain of consideration admitted in the Rs.21,30,654/- return of income is more than the share of the appellant in the receipts appearing in the seized paper and therefore, no addition is warranted on this account.*

*11.In view of the above factual position, the amount of Rs.2,89,38,000/- cannot be Firstly, added. there is an error in the working in arriving at the receipt of Rs.2,89,38,000/-. Secondly, the said amount represents the consideration received on sale of*

*plots and the appellant had 50% Share which was already admitted in the return of income filed for the asse IT year (A 2014-15. Therefore, the Assessing Officer is not justified in making the addition and ne is not justified in confirming the addition.*

*12. Cash receipt of Rs.12,50,000/: This was taken by the Assessing Officer from page Annexure A/PMB/06 and the seized material is at page No.1 of the paper book. The appellant Submitted that Sri M.Ranga Reddy paid the amount for acquisition of suitable property. As u required plot was not located, the amount was returned. The fact that the amount was received from Sri M.Ranga Reddy through cheque is confirmed by the entry in the seized document itself. (Kindly refer to Sec.132 (4A) of the Act). It is also submitted that the appellant id maintain b00ks of account. He did not record the receipt in his books. In the circumstances, neither the provisions of Sec.68 nor the provisions of Sec.69 are applicable. The said amount was never received as the income of the appellant and the seized material does not provide any such information. Therefore, it cannot be added. The same may please be deleted.*

*13. Cash receipt of Rs.94,50.000/: The relevant Seized material is at page No.5 of the paper book. The heading in the seized document shows as Ghatkesar Venture and share shows as 40%. The total area is mentioned at 7 acres 20 guntas. The appellant submitted that the said venture was proposed to be entered into with one Sri K.Gopal Goud who paid the amount of Rs.94,50,000/-. In fact, the appellant did not maintain any books of account and, therefore, the provisions of Sec.68 have no application. The amount was not invested anywhere and, therefore, the provisions of Sec.69 have no application. Further, the seized material shows about Ghatkesar venture. The venture of 7 acres 20 guntas at Ghatkesar did not take place and the amounts were returned to Sri K.Gopal Goud. Further, the seized material itself is the proof that the amount was received from Sri K.Gopal Goud. Further, the seized material itself is the proof that the amount was received from Sri K.Gopal Goud. The sad evidence is a reliable evidence in view of Sec.132(4A) of the Act. Therefore, the Assessing Officer is not justified in making addition.*

*14. Cash receipt of Rs.1.55.00.000 The Assessing Officer has considered the seized material on page 6 of the paper book for making this addition. One Sri R.Brahmanna, is a shareholder in Boduppal venture along with 9 others. He paid towards his share in the venture and not to the appellant. It is the amount of Sri Brahmanna in respect of Boduppal and Chengicherla ventures and has nothing to do with the appellant. The amounts were not received by the appellant. They were not recorded in the books of*

*the appellant. They were not utilized by the appellant. In the circumstances, it cannot be said that the said amount represents the income of the appellant. In such circumstances, it is not correct for the Assessing Officer to make addition of Rs.1,55,00,000/-.*

*15. It is further submitted that the seized material shows the total payments by Sri R Brahmanna - Rs.2,25,00,000 in respect of Boduppal venture and Rs.20,00,000 in respect of Chengicherla Venture. Further, the payments of Rs.2,25,000/- includes Rs.90,00,000/- paid by Sri Brhammana by cheques and the balance of Rs.1,35,00,000/- by cash. Therefore, the Assessing Officer is not correct to ignore the payments made by Sri Brahmanna by cheques and to consider the cash payments made by him as if they belonged to the assessee. Therefore, the Assessing Officer has wrongly made the addition of Rs. 1,55,00,000 (Rs.1,35,00,000 of Boduppal venture and Rs.20,00,000 of Chengicherla venture) and the learned CIT (A) has wrongly confirmed the said addition without properly appreciating the entries appearing in the seized material. In view of the above, the addition of Rs,1,55,00,000/- need to be deleted”.*

97. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that when the assessee has himself worked out the details and has offered Rs.15.00 crores as additional income in the statement recorded u/s 132(4) of the Act, therefore, the learned CIT (A) is fully justified in sustaining the addition made by the Assessing Officer, since the assessee has retracted from his declaration after a period of two years and no documentary evidence has been filed to substantiate the same.

98. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. So far as the addition of Rs.2,89,38,000 is concerned, a perusal of the seized document, copy of which is placed at page 10 of the Paper Book, shows that an amount of Rs.1,06,44,000/- has been

added twice. On being confronted to the learned DR, he also fairly conceded that the same is cumulative totaling and the amount of Rs.1,06,44,000/- appears to be made twice. Since the amount of Rs.1,06,44,000/- has been added twice while making the addition of Rs.2,89,38,000/- therefore, the amount of Rs.1,06,44,000/- is directed to be deleted.

99. So far as the remaining amount of Rs.1,82,94,000/- is concerned, we find merit in the argument of the learned Counsel for the assessee that the same represents the sale consideration received on sale of plots in Sai Krishna Enclave where the assessee's share is only 50% i.e. Rs.91,47,000/-. The assessee in his return of income for the impugned A.Y has adopted sale consideration at Rs.99,42,558/- being 50% share in the project after claiming the purchase cost of Rs.78,11,904/- and admitted capital gain of Rs.21,30,654/-. Since the sale consideration admitted in the return of income is more than the receipt appearing in the seized papers, therefore, in our opinion, no addition is called for. Accordingly, the addition made by the Assessing Officer and sustained by the learned CIT (A) is directed to be deleted.

100. So far as the cash receipt of Rs.12,50,000/- is concerned, it is the submission of the learned Counsel for the assessee that the above amount was received from Mr. M. Ranga Reddy for acquisition of a suitable property. Since the same was not located, the amount was returned. We find identical issue had also come up in the immediately preceding A.Y and we have already decided the issue by estimating the profit on such receipt @ 10%. We, therefore, direct the Assessing Officer to restrict the addition to Rs.1,25,000/- as against Rs.12,50,000/-.

101. So far as the cash receipt of Rs.94,50,000/- is concerned, we find the amount relates to Ghatkeshwar venture and as per the seized document, copy of which is placed at Page 5 of the Paper Book, the share of the assessee is 40%. Therefore, without going into the argument of provisions of section 68 & 69 of the Act have no application in absence of maintenance of books of account, we accept the alternate contention of the assessee that only 40% of the amount should be added. We direct the Assessing Officer to restrict the addition to 40% of Rs.94,50,000/- as against the whole amount made by the Assessing Officer and sustained by the learned CIT (A).

102. So far as the cash receipt of Rs.1,55,00,000 is concerned, we find from the copy of the seized document placed at page 6 of the Paper Book according to which the amount relates to one Mr. Brahmanna and it is mentioned below that "Bodupal 20%". It is the submission of the learned Counsel for the assessee that Sri Brahmanna is a shareholder in Bodupal venture along with 9 others and he had paid his share in the venture and not to the assessee. A perusal of the seized document shows that out of the total amount of Rs.2,25,00,000 mentioned therein on different dates, the Assessing Officer has not made any addition in respect of cheque amount of Rs.15.00 lakhs, Rs.20.00 lakhs and Rs.55.00 lakhs totaling to Rs.90.00 lakhs but has made the addition of Rs.1,55,00,000/- being the cash entries. In our opinion, the seized documents are to be accepted as a whole and it cannot be accepted in part and rejected in part. Since the Assessing Officer has accepted the cheque amount received from Shri Brahmanna for the Bodupal venture, where his share is mentioned at 20% in the seized documents itself, therefore we find force in the argument of the learned Counsel for the assessee

that the balance amount of Rs.1,55,00,000/- also received in cash from Shri Brahmanna towards his 20% share could not be added as income of the assessee. We therefore, set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition of Rs.1,55,00,000/-.

103. In ground of appeal No.6, the assessee has challenged the order of the learned CIT (A) in sustaining the unaccounted expenditure 1,00,00,000/- which consists of various amount made by the Assessing Officer.

104. After hearing both the sides, we find the above addition of Rs.1,00,00,000 consists of Rs.25.00 lakhs each twice and Rs.12,50,000/-(4 times). The above additions are made on the basis of cash receipts and certain working in the seized documents during the course of search. So far as first Rs.25.00 lakhs is concerned, the Assessing Officer noted that Annexure A/PMB/02 containing pages numbered from 01 to 56 was seized from the residence of the assessee As per Page No 29 & 30 of the above Seized Annexure, Sri. Brahmanna Goud has paid an amount of Rs. 25,00,000/- to Sri N Sudhakar on 20.01.2014 as advance money towards purchase of Agricultural Land Admeasuring Ac 2-33 Guntas., at Sy.No.215/part, Boduppal. Ghatkesar, Ranga Reddy Dist. The assessee failed to furnish the sources of the said expenditure with supporting evidence Hence. the amount of Rs 25.00,000/- was brought to tax in the hands of the assessee as his unaccounted expenditure.

105. So far as the second Rs.25.00 lakhs is concerned, we find the Assessing Officer noted that Annexure A/PMB/06 is a Green Signet Long Register Deluxe containing written pages



numbered from 01 to 21 which was impounded from the business premises of the assessee. As per Page No.7 of the above impounded Annexure, the assessee has paid an amount of Rs.25,00,000/- to Sri Sudhakar. When the assessee was asked to furnish the sources of the said expenditure with supporting evidence, the assessee failed to furnish any. Hence, the amount of Rs 25,00,000/- was brought to tax in the hands of the assessee as his unaccounted expenditure.

106. So far as the first Rs.12.50 lakhs is concerned, we find the Assessing Officer made the addition on the basis of Page No.16 of the seized annexure A/PMB/06 which is a Black Diary of SBI General Insurance containing written pages 1 to 51. The assessee has made cash payment of Rs.10,00,000/- to Sri.C.Narasimha and Rs.2,50,000/- towards Development Cost. When the assessee was asked to furnish the sources of the said expenditure with supporting evidence, the assessee failed to furnish any. Hence, the entire amount of Rs.12,50,000/- was treated as his unaccounted expenditure and brought to tax.

107. So far as the 2<sup>nd</sup> Rs.12.50 lakhs is concerned, we find the Assessing Officer made the addition on the ground that as per Page No.17 of the above Seized Annexure, the assessee has made cash payment of Rs.10,00,000/- to Sri.Thotkura Ravi Yadav and Rs.2,50,000/- towards Development Cost. When the assessee was asked to furnish the sources of the said expenditure with supporting evidence, the assessee failed to furnish any. Hence, the entire amount of Rs.12,50,000/- was treated as his unaccounted expenditure and brought to tax.

108. So far as 3<sup>rd</sup> Rs.12.50 lakhs is concerned, the Assessing Officer noted that as per page No.18 of the Annexure A/PMB/6 according to which the assessee has made cash payment of Rs.10.00 lakhs to Shri K. Gopal Goud on 9.9.2013 and Rs.2,50,000/- towards development cost on 9.9.2013. Since the assessee failed to furnish the source of the above expenditure with supporting evidence, the Assessing Officer added the entire amount of Rs.25,00,000/- to the total income of the assessee as his unaccounted expenditure.

109. So far as the 4<sup>th</sup> Rs.12.50 lakhs is concerned, the Assessing Officer noted that as per page 19 of the above seized annexure, the assessee has made cash payment of Rs.12,00,000/- towards Balapur venture on 20.07.2013. Since the assessee failed to furnish the source of such expenditure with supporting evidence, the Assessing Officer made the addition of Rs.12,50,000/- as his unaccounted expenditure to the total income of the assessee although the amount as per the seized document is only Rs.12,00,000/-.

110. Before the learned CIT (A) the assessee made elaborate arguments based on which the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report from the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) sustained the addition on the ground that the assessee himself has worked out the undisclosed income in his submissions made before the DDIT (Inv.). Further, the assessee himself has declared the additional income of Rs.15.00 crores which he is retracting after a lapse of two years without any justice.

111. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

112. The learned Counsel for the assessee while making his arguments drew the attention of the Bench to the following written submissions:

*"8. Ground Nos.4 & 5: This is with regard to additions made of Rs.2,89,38,000, Rs.12.50,000/-; Rs. 94,50,000/ and Rs.1,55,00,000/- on the ground that they represent unexplained cash receipts. The Assessing Officer made addition of Rs.2,89,38,000/- on the ground that page 10 of Annexure A/PMB/01 shows receipts of Rs.2,89,38,000/-.*

*9. Firstly, the appellant submits that the total does not work out to Rs.2,89,38,000/-. The amounts appearing in the seized paper carries the progressive total showing the receipts at different points of time. Such final progressive total of the said receipts is Rs.1,82,94,000/- i.e., Rs.1,58,44,000 24,50,000. It can be seen from the said seized paper (Page No.10 of the Paper book) that the first total of Rs.59,54,000/- represent receipts up to 11.5.2013; then, the second total of Rs.85,44,000/- includes Rs.59,54,000/; then the third such total of Rs.1,06,44,000/- includes Rs.85,44,000/; and then the total of Rs.1,58,44,000/- includes Rs.1,04,44,000/- and the final total of Rs.1,82,94,000/- includes Rs,1,58,44,000/. Therefore, in total, the seized paper shows the receipts of Rs.1,82,94,000/- only and not Rs.2,89,38,000/- as taken by the Assessing Officer. The Assessing Officer has wrongly added Rs.1,06,44,000/- to the final total of Rs.1,82,94,000/- and arrived the figure of Rs.2,89,38,000/- which is wrong, figure of Rs.2,89,38,000/- taken by the Assessing Officer included Rs.1,06,44,000/- twice. Therefore, the correct receipts in the seized paper are Rs.1,82,94,000/- only.*

*10. Secondly, the said receipts of Rs.1,82,94,000/- represents the sale consideration received on sale of plots in Sai Krishna Enclave wherein the assessee's share is 50% only i.e., Rs.91,47,000/-. The appellant, in his return of income for the impugned A.Y.2014-15, adopted sale consideration at Rs.99,42,558/- being 50% share in the project and after claiming the purchase cost of Rs.78,11,904/, admitted capital gain of Rs.21,30,654/- The sale consideration admitted in the return of income is more than the share of the appellant in the receipts appearing in the seized paper and therefore, no addition is warranted on this account.*

*11. In view of the above factual position, the amount of Rs.2,89,38,000/- cannot be added. Firstly, there is an error in the working in arriving at the receipt of Rs.2,89,38,000/-. Secondly, the said amount represents the consideration received on sale of plots and the appellant had 50% share which was already admitted in the return of income filed for the assessment year 2014-15. Therefore, the Assessing Officer is not justified*

*in making the addition and the CIT (A) is not justified in confirming the addition.*

*12 Cash receipt of Rs.12.50,000/-: This was taken by the Assessing Officer from page Annexure APMB/06 and the seized material is at page No.1 of the paper book. The appellant submitted that Sri M.Ranga Reddy paid the amount for acquisition of suitable property. As required plot was not located, the amount was returned. The fact that the amount was received from Sri M.Ranga Reddy through cheque is confirmed by the entry in the seized document itself. (Kindly refer to Sec.132 (4A) of the Act). It is also submitted that the appellant did not maintain books of account. He did not record the receipt in his books. In the circumstances, neither the provisions of Sec.68 nor the provisions of Sec.69 are applicable. The said amount was never received as the income of the appellant and the seized material does not provide any such information. Therefore, it cannot be added. The same may please be deleted.*

*13 Cash receipt of Rs.94.50.000: The relevant Seized material is at page No.5 of the paper book. The heading in the seized document shows as Ghatkesar Venture and share shows as 40%. The total area is mentioned at 7 acres 20 guntas. The appellant submitted that the said venture was proposed to be entered into with one Sri K.Gopal Goud who paid the amount of Rs.94,50,000/-. In fact, the appellant did not maintain any books of account and, therefore, the provisions of Sec.68 have no application. The amount was not invested anywhere and, therefore, the provisions of Sec.69 have no application. Further, the seized material shows about Ghatkesar venture. The venture of 7 acres 20 guntas at Ghatkesar did not take place and the amounts were returned to Sri K.Gopal Goud. Further, the seized material itself is the proof that the amount was received from Sri K.Gopal Goud. Further, the seized material itself is the proof that the amount was received from Sri K.Gopal Goud. The said evidence is a reliable evidence in view of Sec.132(4A) of the Act. Therefore, the Assessing Officer is not justified in making addition.*

*14 Cash receipt of Rs.1,55,00,000- The Assessing Officer has considered the seized material on page 6 of the paper book for making this addition. One Sri R.Brahmanna, is a shareholder in Boduppall venture along with 9 others. He paid towards his share in the venture and not to the appellant. It is the amount of Sri Brahmanna in respect of Boduppall and Chengicherla ventures and has nothing to do with the appellant. The amounts were not received by the appellant. They were not recorded in the books of the appellant. They were not utilized by the appellant. In the circumstances, it cannot be said that the said amount represents the income of the appellant. In such circumstances, it is not correct for the Assessing Officer to make addition of Rs.1,55,00,000/-*

*15. It is further submitted that the seized material shows the total payments by Sri R Brahmanna - Rs.2,25,00,000 in respect of Boduppall venture and Rs.20,00,000 in respect of Chengicherla Venture. Further, the payments of Rs.2,25,000/- includes Rs.90,00,000/- paid by Sri Brahmanna by cheques and the balance of Rs.1,35,00,000/- by cash. Therefore, the Assessing Officer is not correct to ignore the payments made by Sri Brahmanna by cheques and to consider the cash payments*

*made by him as if they belonged to the assessee Therefore, the Assessing Officer has wrongly made the addition of Rs.1,55,00,000 Rs.1,35,00,000 of Boduppal venture and Rs.20,00,000 of Chengicherla venture] and the Ld. CA) has wrongly confirmed the said addition without properly appreciating the entries appearing in the seized material. In view of the above, the addition of Rs.1,55,00,000/- need to be deleted”.*

113. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A). He submitted that when the assessee, during the course of search proceedings had himself made the calculation and offered the income before the DDIT (Inv.) and further the assessee himself has admitted additional income of Rs.15.00 crores in his statement recorded u/s 132(4), therefore, after a period of 2 years retraction by the assessee is not justified. He accordingly submitted that the order of the learned CIT (A) should be upheld and the ground raised by the assessee should be dismissed.

114. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. So far as the first addition of Rs.25.00 lakhs is concerned, we find the same is based on the seized document, copy of which is placed at Page 11 of the Paper Book, which is a cash receipt dated 20.01.2014 and it is received from one Mr. Sudhakar S/o Late Shri N. Venkatesh. The receipt is also towards sale of agricultural land situated at Bodupal in Ghatkeswar Mandal in Ranga Reddy District. It is the submission of the learned Counsel for the assessee that the said amount is received by one Mr. N. Sudhakar from one Mr. R. Brahmanna Goud for purchase of agricultural land and therefore, this cannot be added to the total income of the assessee. However, the assessee has not explained who is Mr. N.

Sudhakar and as to whether he is an employee or agent. It is also not known as to why this receipt was found from the premises of the assessee. Therefore, the submission of the learned Counsel for the assessee that since it was issued by Mr. N.Sudhakar, the addition cannot be made in the hands of the assessee cannot be accepted. The order of the learned CIT (A) sustaining this addition is accordingly upheld.

115 So far as the 2<sup>nd</sup> addition of Rs.25.00 lakhs is concerned, we find the Assessing Officer made the addition on the ground that as per page 7 of the impugned annexure, the assessee has paid an amount of Rs.25.00 lakhs to Sri Sudhakar. Since the assessee could not explain satisfactorily, the Assessing Officer made the addition which has been upheld by the learned CIT (A). It is the submission of the learned Counsel for the assessee that it represents only the working and no information is available that the assessee has received the amount of Rs.25.00 lakhs from Sri Sudhakar or from anyone. However, we do not find any merit in the above argument of the learned Counsel for the assessee in absence of any satisfactory explanation. Therefore, the order of the CIT (A) sustaining the addition made by him so is upheld.

116. So far as the 1<sup>st</sup> addition of Rs.12,50,000/- is concerned, we find the Assessing Officer made the addition on the ground that cash payment of Rs.10.00 lakhs and Rs.2,50,000/- were made for the Bodupal Venture. However, a perusal of the seized document, copy of which is placed in the paper book at Page No.21 shows that the said amount was paid by one Mr. Narasimha for development of the Bodupal venture where his share is 10%. We, therefore, find merit in the submission of the

learned Counsel for the assessee that it was not the payment made by the assessee but payment made by Shri Narasimha whose share in the Bhodupal project is 10%. Accordingly, the order of the learned CIT (A) is set aside and the Assessing Officer is directed to delete the addition of Rs.12,50,000/- being related to Shri Narasimha.

117. So far as the 2<sup>nd</sup> addition of 2<sup>nd</sup> Rs.12.50 lakhs is concerned, we find the Assessing Officer made the addition on the ground that cash payment of Rs.10.00 and Rs.12.50 lakhs were made for the Bhodupal venture. However, a perusal of the seized document copy of which is placed at Page 21 of the Paper Book shows that the amount was paid by Shri T. Ravi Yadav who is having 10% share in the Bhodupal venture. We, therefore, find merit in the argument advanced by the learned Counsel for the assessee that it is not a payment made by the assessee but payment made by Shri T. Ravi Yadav for his 10% share in the Bhodupal venture. Therefore, the order of the learned CIT (A) is set aside and the Assessing Officer is directed to delete the addition.

118. So far as the 3<sup>rd</sup> addition of Rs.12,50,000 is concerned, we find the addition is made on the ground that the cash of Rs.10.00 and Rs.2.5 lakhs were paid for the Bhodupal venture. However, a perusal of the seized document placed at Page No.19 of the Paper Book shows that it relates to one Shri K. Gopal Goud having 10% share in the Bhodupal venture. We, therefore, find merit in the argument advanced by the learned Counsel for the assessee that it is not a payment made by the assessee but payment made by Shri K. Gopal Goud for his 10% share in the Bhodupal venture. Therefore, the order of the learned

CIT (A) is set aside and the Assessing Officer is directed to delete the addition.

119. So far as the 4<sup>th</sup> addition of Rs.12.50 lakhs is concerned, we find the Assessing Officer made the addition on the ground that an amount of Rs.12.00 lakhs was paid for the Balapur venture on 20.7.2013 and such expenditure was not explained by the assessee. Although the seized paper according to the Assessing Officer is Rs.12.00 Lakhs, however, he made addition of Rs.12.50 lakhs. It is the submission of the learned Counsel for the assessee that the Balapur venture was undertaken by Shri K. Gopal Goud and Sri Brahamanna and the assessee is not a partner in the said venture. It is his submission that after incurring some expenditure, the venture was aborted. However, we find no merit in the argument of the learned Counsel. Merely, because the assessee has not claimed the expenditure, the same cannot be a ground to delete the addition especially when the seized document was found from the premises of the assessee and there is no proper explanation. However, since the above amount is an expenditure incurred by the assessee, the assessee is entitled to claim set off for additions made in the preceding year or in the current year. We, therefore, direct the Assessing Officer to give the benefit of set off for the addition, if any, made in this year or in the preceding year after ascertaining the availability of funds. Needless to say the Assessing Officer shall give due opportunity of being heard to the assessee while deciding the issue. explaining the source of expenditure. The ground relating to addition of Rs.12.00 lakhs is accordingly allowed for statistical purposes.



120. In Ground of appeal No.7, the assessee has challenged the order of the learned CIT (A) in confirming the addition of Rs.21.00 lakhs as undisclosed receipts.

120.1 Facts of the case, in brief, are that Annexure A/PMB/06 is a Black Diary of SBI General Insurance containing written pages from 01 to 21 which was impounded from the business premises of the assessee. As per Page No.41 of the above impounded Annexure, the assessee has received Rs.77,00,000/- under the head Tulsi Bhavani Nagar during the FY 2012-13(Rs 56 lakhs) & FY 2013-14 (Rs 21,00,000/-). When confronted, the assessee had no reply. Hence, the Assessing Officer made addition of the amount of Rs 21,00,000/- pertaining to FY 2013-14 as his undisclosed income.

121. Before the learned CIT (A), it was submitted that as per the seized documents, the amounts were received under the head Tulsi Bhavani Nagar and the amount has already been admitted in the return of income. Therefore, the Assessing Officer is not justified for the above said addition.

122. Based on the arguments of the learned Counsel, the learned CIT (A) called for a remand report from the Assessing Officer and after considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) sustained the addition. While doing so, he observed that during the course of search and seizure proceedings, the assessee himself had admitted Rs.15.00 crore as additional income and therefore, after a period of two years, the assessee cannot retract from the declaration made earlier.

123. The learned Counsel for the assessee submitted that the amounts were received towards Tulsi Bhavani Nagar venture which is clear from the seized document. Referring to the copy of the seized document, copy of which is placed at Page 4 of the Paper Book, he submitted that the amounts were received towards Tulsi Bhavani Nagar project. Further, the assessee had admitted 1/5<sup>th</sup> of the sale consideration of land at Tulsi Bhavani Nagar amounting to Rs.99,42,558/- and admitted the net capital gain of Rs.21,30,654/-. Since the entire sale consideration received as reduced by the cost was offered for the assessment, therefore, again making the addition on the ground that the assessee has received Rs.21.00 lakhs against Tulsi Bhavani Nagar Project is not justified.

124. The learned DR, on the other hand, strongly supported the order of the learned CIT (A). He submitted that the assessee himself has declared Rs.15.00 crores as additional income during the course of search in the statement recorded u/s 132(4) of the Act, therefore, retracting the same after a period of 2 years without any valid reason or documentary evidence is not justified. He accordingly submitted that the order of the learned CIT (A) be upheld and the ground raised by the assessee on this issue be dismissed.

125. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made addition of Rs.21.00 lakhs as undisclosed receipt on the ground that page 41 of the seized annexure mentioned that there was a receipt of

Rs.77.00 lakhs on various dates out of which an amount of Rs.21.00 lakhs relates to this year. We find the learned CIT (A) sustained the addition. It is the submission of the learned Counsel for the assessee that the amounts were received towards Tulsi Bhavani Nagar venture and the assessee has already admitted 1/5<sup>th</sup> of the sale consideration of land at Tulsi Bhavani Nagar for an amount of Rs.99,42,558/- and has admitted the capital gain of Rs.21,30,654/-. It is his submission that despite the same being offered in the return of income, the Assessing Officer again made the addition which is not justified. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the copy of the return of income filed by the assessee shows that the assessee has declared sale consideration of Rs.94,42,558/- being 1/5<sup>th</sup> in the sale of land at Marepally, Ghatkesar Mandal, Hyderabad. After deducting the purchase cost of Rs.75.00 lakhs, the assessee has declared profit of Rs.21,30,654/- which is not disputed by the Assessing Officer in the assessment order. Since the Assessing Officer himself has accepted capital gain of Rs.21,30,654/-, therefore, again making the addition of Rs.21.00 lakhs for the same seized document, in our opinion, is not justified. Therefore, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition of Rs.21.00 lakhs. Accordingly, this ground raised by the assessee is allowed.

126. Ground of appeal No.8 relate to the order of the learned CIT (A) in confirming the determination of capital gain of Rs.78,11,904.

126.1 Fact of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that the

assessee has declared short term capital gain of Rs.21,30,654/- from the sale of land at Marpallyguda. However, despite number of opportunities granted, the assessee did not file any evidence. The Assessing Officer therefore, made addition of Rs.78,11,904/- as income from undisclosed sources after reducing the gain offered by the assessee from the sale consideration of Rs.99,42,558/-.

127. In appeal, the learned CIT (A) upheld the action of the Assessing Officer by observing as under:

*“11.4 I have carefully considered the submission made by the appellant as well as the observations of the Assessing Officer in the impugned order. The sale consideration of the property is Rs.99,42,558/-, which is not disputed by the Assessing Officer or by the appellant. The Assessing Officer has, however, chosen to tax the entire amount as the assessee’s income, whereas the contention of the appellant is that the cost of acquisition of Rs.1,48,00,000/- is added in A.Y 2013-14. Notwithstanding that, the appellant has not given any proof of the development expenses claimed. The Assessing Officer has also stated that the appellant had himself offered the said amount as additional income before the DDIT (Inv.). In view thereof, the addition made is confirmed and all grounds related to this issue are DISMISSED”.*

128. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

128.1 The learned Counsel for the assessee submitted that the assessee has purchased the property on 1.4.2013 along with 4 others for a consideration of Rs.78,11,904/-. Accordingly, the purchase cost was reduced from the sale consideration. Since no capital gain was offered to tax and the Assessing Officer refused to allow the cost of purchase of the property sold by the assessee, therefore, the cost of acquisition has to be allowed while working out the capital gain.

129. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A).

130. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made addition of Rs.78,11,904/- as income from undisclosed sources on the ground that the assessee failed to substantiate the purchase cost of the land which it has reduced from the sale consideration while computing capital gain. We find the learned CIT (A) sustained the order of the Assessing Officer the reasons of which are already reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that it has reduced the cost price of Rs.78,11,904/- from the sale consideration of Rs.99,42,558/- for computing the short term capital gain. Since according to the Assessing Officer, the assessee could not substantiate the purchase cost of Rs.78,11,904/-, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate with evidence to his satisfaction regarding purchase cost of Rs.78,11,904/- which the assessee has claimed as deduction from the sale consideration of Rs.99,42,558/-. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the assessee is allowed for statistical purposes.

131. Ground of appeal No.9 relates to levy of interest under section 234A(3) and 234B(3) of the I.T. Act which are mandatory and consequential in nature. Accordingly, this ground is dismissed.

**ITA No.135/Hyd/2019 – A.Y. 2015-16**

132. The grounds raised by the assessee for A.Y 2015-16 read as under:

*“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

*2. The learned Commissioner of Income-Tax (Appeals) erred in Confirming the action of the Assessing officer in initiating the proceedings u/s 153A of the I.T. Act inspite of the fact that search was not contemplated in the case of the appellant.*

*3. The learned Commissioner of Income-Tax (Appeals) erred in Confirming the addition made by the Assessing officer of Rs.25 lakhs on the ground that it represents unaccounted receipt.*

*4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in making addition on account of unexplained expenditure of Rs.55.60 lakhs; Rs.197.90 lakhs; Rs.1.0 lakh; and Rs.43.32 lakhs without properly considering the explanation offered by the appellant. The learned Commissioner of Income-Tax (Appeals) ought to have seen that the appellant properly explained the source for each expenditure incurred by the appellant and the learned Commissioner of Income-Tax (Appeals) ought to have held that the Assessing Officer is not justified in making such additions.*

*5. The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of interest u/s 234A(3) and 234B(3) of the I.T. Act. 6. Any other ground that may be urged at the time of hearing”.*

133. Ground of appeal No.1 & 6 being general in nature are dismissed.

134. In Ground of appeal No.2, the assessee has challenged the validity of the initiation of proceedings u/s 153A of the Act. After hearing both sides, we find this ground is identical to the ground of appeal in ITA No.132/Hyd/2018 for the A.Y 2012-13.

We have already decided the issue and the ground raised by the assessee on this has been dismissed. Following similar reasoning, this ground raised by the assessee is dismissed.

135. Ground of Appeal No.3 relates to the order of the learned CIT (A) in confirming the addition of Rs.25.00 lakhs made by the Assessing Officer on account of unaccounted receipts.

136. Facts of the case, in brief are that Annexure A/PMB/01 is a loose sheet of paper containing pages numbered from 01 to 58 which was seized from the residence of the assessee. Page no.6 of the seized Annexure is a cash receipt, dated 31.10.2014 wherein an amount of Rs.25 lakhs is seen to have been received by the assessee in cash from Smt.Nagineny Pradamda during the financial year 2014-15, towards sale of Open Plot at Sy.No.351 & 354, Area 1625 Sq.Yds, Uppal, R,R. Dist. i.e. @ Rs.22,000/ per Sq.Yds. The Assessing Officer asked the assessee to confirm whether the said receipt of Rs.25,00,000/- was offered to tax. The assessee was also asked to show cause as to why entire receipt of Rs.25,00,000/- should not be treated as his undisclosed income and brought to tax for the A.Y.2015-16. The assessee failed to file any reply in this regard. Accordingly, the entire receipts of Rs.25,00,000/- was treated by the Assessing Officer as undisclosed income of the assessee.

137. Before the learned CIT (A), it was submitted that the amount was received as advance against the sale of plot in survey numbers 351 & 354. Therefore, the addition made by the Assessing Officer is not in accordance with law since it is only an advance and the plot was not sold.

138. However, the learned CIT (A) did not accept the contention of the assessee and sustained the addition made by the Assessing Officer. While doing so he noted that the amount in question has been disclosed by the assessee himself in his written submission made before the DDIT (Inv.) and the assessee himself has worked out the undisclosed income and offered the same for taxation. Despite ample opportunity given by the Investigation Wing as well as by the Assessing Officer during the assessment proceedings, the assessee failed to offer any satisfactory explanation. Further, the assessee had also disclosed the additional income of Rs.15.00 crores during the course of search in his statement recorded u/s 132(4) of the Act and retraction of the same after a period of more than 2 years is not a valid retraction.

139. Aggrieved with order of the learned CIT (A), the assessee is in appeal before the Tribunal.

140. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in sustaining the addition made by the Assessing Officer. He submitted that the Assessing Officer made the addition on the basis of the seized document page No.6 of Annexure A/PMB/01 containing 58 pages. As per the cash receipt, the assessee has received advance against purchase of plot. He submitted that the Assessing Officer should have considered all the facts contained in the seized material. Since the plot was never sold during the year, therefore, no addition is called for. Further, the assessee does not maintain any books of account and the said amount was also not recorded in the books of account nor used as a source. Therefore, provisions of section 68 & 69A are not applicable.



141. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A). He submitted that the seized document shows that it is a cash receipt dated 31.01.2014 where an amount of Rs.25.00 lakhs is shown to have been received by the assessee in cash from one Smt. Nagini Pramada towards sale of an open plot in survey numbers 351 & 354, area 1625 sq.yards at Uppal in R.R. District. Therefore, the learned CIT (A) was fully justified in sustaining the addition made by the Assessing Officer.

142. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made addition of Rs.25.00 lakhs on the ground that the assessee has received an amount of Rs.25.00 lakhs in cash from one Smt. Nagini Pramada towards sale of one plot in Survey No.351 & 354. Area 1625 sq. yards and the assessee has not disclosed the same, therefore, it is an unaccounted receipt. We find the learned CIT (A) upheld the action of the Assessing Officer on the ground that despite ample opportunity given by the search party as well as the Assessing Officer during the course of assessment proceedings, the assessee failed to offer any satisfactory explanation. Further, the amount in question was disclosed by the assessee himself in his written submission made before the DDIT (Inv.) and he has himself worked out the undisclosed income. Further, the assessee had retracted from the disclosure of additional income of Rs.15.00 crores after a period of 2 years therefore, it is not a valid retraction. It is the submission of the learned Counsel for the

assessee that the amount of Rs.25.00 lakhs, in question, is an advance for sale of plots and not an actual sale and therefore, it cannot be brought to tax. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the seized document copy of which is placed at page 6 of the paper book clearly shows that the amount of Rs.25.00 lakhs received from Smt. Nagini Pramada for sale of open plot in Survey No.351 & 354 having 1625 sq.yards is an advance amount. Since the amount in question is an advance and no sale has taken place, therefore, we find force in the argument of the learned Counsel for the assessee that the same cannot be treated as income. Nothing has been brought on record by the Revenue that the said plot, in question, has in fact been sold during the year. Even otherwise also, without deducting the cost of the plot, the entire addition could not have been added to the total income of the assessee as unexplained cash receipt. However, since the seized document clearly shows that the amount of Rs.25.00 lakhs is received as an advance towards sale of open plot bearing survey numbers 351 & 354 having 1625 sq. yard and the assessee has not given any such details before the lower authorities therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue as per fact and law afresh after giving due opportunity of being heard to the assessee. The ground raised by the assessee is accordingly allowed for statistical purposes.

143. In ground of appeal No.4, the grievance of the assessee is regarding the order of the learned CIT (A) in confirming the addition of Rs.55.60 lakhs; Rs.197.90 lakhs; Rs.1.0 lakh; and

Rs.43.32 lakhs respectively on account of unexplained expenditure.

144. Fact of the case, in brief, are that the Assessing Officer on the basis of the seized document A/PMB/06 which contains written pages 1 to 21 noted that page No.7 of the impugned annexure shows that the assessee has incurred expenditure of Rs.55,60,000/- under the head "Owner Payment (Sudhakar)". In absence of any satisfactory explanation regarding the source of the said expenditure, the Assessing Officer made the addition of the same. Similarly, as per the said written pages 1 to 21, the Assessing Officer noted that the assessee has incurred an expenditure of Rs.1,97,90,000/- during the financial year 2014-15 and the assessee failed to furnish any explanation to explain the source of the said expenditure. Therefore, the Assessing Officer made addition of the same.

145. Similarly, as per page No.58 of the said annexure, he noted that the assessee has incurred an expenditure of Rs.1.00 lakhs on 6.6.2014. In absence of any satisfactory explanation by the assessee to explain the source of such expenditure, the Assessing Officer made addition of Rs.1.00 lakh. The Assessing Officer further noted that the assessee has made declaration of additional income of Rs.15.00 crores before the DDIT (Inv.) Hyderabad which was subsequently confirmed by an affidavit dated 5.1.2015. In the explanation before the DDIT (Inv.), the assessee had arrived at income of Rs.14,56,68,000/- for various years and further offered an amount of Rs.43,32,000/- to cover the discrepancy and honor the commitment given on the date of search. The Assessing Officer, therefore, brought to tax an amount of Rs.43,32,000/- to the total income of the assessee.

146. Before the learned CIT (A), the assessee made elaborate submissions, based on which the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report from the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) upheld the various additions made by the Assessing Officer. While doing so, he held that the amounts, in question, have been disclosed by the assessee himself in his written submission made before the DDIT (Inv.) and the assessee himself has worked out the undisclosed income and offered the same for taxation. Further, the assessee was given ample opportunity during the course of search and post search enquiries and even by the Assessing Officer during the course of assessment proceedings. However, the assessee was unable to explain. Further, the assessee himself has declared additional income of Rs.15.00 crores and retraction of the same after a period of more than two years cannot be considered as a retraction within the reasonable time. He accordingly sustained the addition made by the Assessing Officer.

146.1 Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

147. The learned Counsel for the assessee drew the attention of the Bench to the following written submission filed for explaining the 4 additions above:

*“6. Ground No.4: This ground is with regard to four different additions of Rs.55 60 lakhs Rs.197.90 lakhs, Rs.1.0 lakh and Rs 43.32 lakhs on account of unexplained expenditure.*

*7. The amount of Rs.55.60 lakhs represent payment (Sri Sudhakar) The Assessing Officer is of the view that the said amount represents expenditure by the appellant. The heading is noted as "owner payments Sudhakar". The Assessing Officer is of the view that the appellant paid*

Rs.55.60 lakh to Sri Sudhakar who is the owner of the plot. During the course of hearing, the appellant explained that this account was prepared by Sri Sudhakar in respect of the owners' payments. In this regard, it is submitted that the appellant entered into a Memorandum of Agreement with Sri K.Gopal Goud and 7 others for development of 10 acres 20 guntas of land in Sy.Nos.215 situated at Boduppall village. The appellant was the owner of the property and the developers are Sri K.Gopal and 7 others. The appellant is entitled for 15% of the amount and the developer is entitled for 85%. The amount of 15% was paid by the developers to the appellant and is noted in the said paper.

8. Plotwise payments were effected and the receipts against the development agreement entered into in respect of the property. Therefore, it is not an expenditure incurred and the Assessing Officer is not justified in making the addition.

9. Without prejudice, the appellant submits that the said amount even if it were to be an expenditure should not have been added as there were number of receipts earlier and the expenditure incurred needs to be given set off.

10. Addition of Rs 197.90 lakh: According to the Assessing Officer, the expenditure incurred as per the annexure A/PMB/6 amounted to Rs. 1,97,90,000/-. The Assessing Officer is of the view that there was expenditure to the extent of Rs.1,97,90,000/- as per the annexure A/PMB/06. There is no such figure in Annexure 6. The expenditure towards Boduppall venture is noted at page 24. In respect of Boduppall venture the appellant is the owner of the land and not the developer. The developer is Sri K.Gopal Goud and others who in turn entrusted the venture to Mansani Constructions and Sri Kishore was the person In-charge of the concern. It can be seen from page 24 up to an amount of Rs.56,30,000/- was incurred during the earlier year. The amount incurred by the developer during relevant financial year was Rs.1,50,000/-. The said expenditure was incurred by the developers consisting of Sri K Gopal Goud and 7 others and Mansani Constructions in the name of Sri Kishore. A Copy of agreement is submitted. The said expenditure was not incurred by the appellant during the year.

11. It is further submitted that the seized documents show the expenditure against each o LE venture undertaken. The details of the expenditure incurred and the persons who incurred the expenditure was all mentioned in the document itself. There is no mention in the seized material that the appellant incurred such an expenditure at any point of time. Therefore, the Assessing Officer is not justified in holding that there was any such expenditure incurred by the appellant but not recorded in the books of account. It is also submitted that the appellant has not maintained any books of account. He offered the capital gains by considering the sale price and the cost of acquisition The appellant submits that the Assessing Officer added both the receipts and expenditure. When the appellant has not maintained the books of account, the Assessing Officer cannot make any such addition, partially when explanation was submitted.

12. Unaccounted expenditure: According to the Assessing Officer an amount of Rs.1 lakh was incurred as an expenditure by the appellant. It is submitted that for the year under consideration, the appellant filed the return of income admitting an income of Rs.8,56,180/-, In the immediately preceding year also the appellant admitted substantial income. several advances have been received by the appellant. Therefore, the amount of Rs.1 lakh should not have been added by the Assessing Officer, partially in view of the fact that the appellant did not maintain any books of account.

13. Addition of Rs.43,32,000: According to the Assessing Officer, during the course of 13. search and seizure operations, the appellant offered an additional income of Rs.15 crores before the DDIT (Inv.), Unit-1(1), Hyderabad. The appellant submits that the said admission was retracted later by the appellant. However, the Assessing Officer is of the view that the said amount of Rs.15 crores should be added for all the years together. According to the Assessing Officer, the additions made by him for all the years together works out to Rs.14,56,68,000/- as against the alleged declaration made. Therefore, the Assessing Officer added Rs.43,32,000/- This is not legally valid. When the Assessing Officer is treating certain sum of money as the income there should be a basis for him either from the seized material or from any source. Without any such basis, without any information and simply based on a retracted declaration made, he cannot add the said amount to the income admitted”.

148           The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT (A). He submitted that the learned CIT (A) has given justifiable reasons while sustaining the addition. The assessee in the instant case had himself worked out the undisclosed income in his submission made before the DDIT (Inv.) followed by an affidavit. Further, despite ample opportunity given, the assessee could not substantiate with evidence to the satisfaction of the Assessing Officer regarding the source of such expenditure. Therefore, retraction after a period of two years cannot be considered as a valid retraction. He accordingly submitted that the ground raised by the assessee on this issue should be dismissed.

149.           We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and

the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made addition of Rs. Rs.55.60 lakhs, Rs.197.90 lakhs, Rs.1.0 lakh and Rs.43.32 lakhs respectively on account of undisclosed expenditure on the basis of seized document found during the course of search and the assessee was unable to explain the source of the same. Similarly, addition of Rs.43.32 lakhs was made by the Assessing Officer on the ground that while offering additional income of Rs.15.00 crores, the assessee computed undisclosed income for all the years at Rs.14,56,68,000/- and the balance amount of Rs.43.32 lakhs being the difference between the additional income declared at Rs.15.00 crores and the additional income computed for all the years at Rs.14,56,68,000/- was offered to cover the discrepancy, if any and honor the commitment.

150. So far as the addition of Rs.55.60 lakhs is concerned, a perusal of the seized document shows that the same is mentioned as “owner payment”.. Sudhakar” wherein certain amounts are mentioned totaling of which comes to Rs.55,06,000/-. So far as the amount of Rs.25.00 lakhs is concerned, it is seen that against the said payment of Rs.25.00 lakhs, the narration given is “paid from first Kishore Payment (8 MOU)”. Similarly, against other payments, the plot Nos. etc., are written. The assessee clearly is not in a position to substantiate the nature of these entries and therefore, the assessee is liable to explain the source of the same. However, the alternate contention of the learned Counsel for the assessee that if the said amount is considered as expenditure, then if the receipts earlier added by the Assessing Officer are confirmed by the Tribunal, then the same should be available to the assessee to explain the source of

such expenditure. We therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to compute the final addition that has been sustained on account of unaccounted receipts and allow set off of the same to explain the unexplained expenditure of Rs.55.60 lakhs. The first issue raised by the assessee in the ground of appeal is accordingly allowed for statistical purposes.

151. So far as the 2<sup>nd</sup> addition of Rs.197.90 lakhs is concerned, we find the Assessing Officer made the addition on the basis of seized document page No.1 to 21 annexure A/PMB/01 wherein certain amounts are mentioned as expenditure as “miscellaneous”, the total of which comes to Rs.1,97,90,000/-. It is the submission of the learned Counsel for the assessee that the same relates to the expenditure towards Boduppall venture where the assessee is the owner of the land and not the developer and the developer is Shri K. Gopal Goud & 7 others who in turn entrusted the venture to Mansani Constructions and Sri Kishore was the person Incharge of the concern. It is also his submission that the seized document shows that the expenditure for each of the venture undertaken, the details of expenditure incurred and the persons who incurred the expenditure were mentioned in the document. It is his submission that the expenditure was incurred by the developer consisting of Shri K.Gopal Goud and 7 others and entrusted the development work to Mansani Construction in the name of Shri Kishore. According to the learned Counsel for the assessee there is no mention in the seized material that the assessee has incurred any expenditure at any point of time. Therefore, according to him, no addition can be made.



152. We do not find any force in the above argument of the learned Counsel for the assessee. The seized documents were admittedly found from the premises of the assessee where the details of expenditure are mentioned. The assessee was unable to explain the source of such expenditure. Therefore we uphold the order of the learned CIT (A) on this issue by sustaining the addition made by the Assessing Officer. However, the alternate contention of the learned Counsel for the assessee that set off may be given out of the addition if any finally sustained finds merit. We therefore, direct the Assessing Officer to compute the final addition on account of unexplained receipt and give set off of the above addition, if any, surplus is available. Needless to say that the Assessing Officer shall give due opportunity of being heard to the assessee while computing the final addition.

153. So far as the addition of Rs.1.00 lakh is concerned, it is an undisputed fact that the assessee had filed his return of income admitting an income of Rs.8,56,180/- for the current year and in the preceding year also substantial income was declared. Therefore, the expenditure of Rs.1.00 lakhs made by the Assessing Officer and sustained by the learned CIT (A), in our opinion, under the facts and circumstances of the case is not justified. Accordingly, the same is directed to be deleted.

154. So far as the addition of Rs.43,32,000/- is concerned, admittedly, the assessee while computing the disclosure of additional income of Rs.15.00 crores offered the same being the difference between the amount of Rs.15.00 crores and the additional income for different years calculated at Rs.14,56,68,000/- to cover the discrepancy, if any, and to honor the commitment given. We find merit in the submission of the

learned Counsel for the assessee that when the Assessing Officer has treated certain amount of money as income, there should be a basis for him either from the seized material or from any other source. Without any basis or without any evidence, the addition made by the Assessing Officer and sustained by the CIT (A), in our opinion, is not correct. We therefore, set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition. Ground of appeal 4 of the assessee is partly allowed for statistical purposes.

155. Ground of appeal 5 relates to levy of interest under section 234A(3) and 234B(3) of the I.T. Act which are mandatory and consequential in nature. Accordingly, this ground is dismissed.

156. In the result, all the four appeals filed by the assessee are partly allowed and the only appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 26<sup>th</sup> September, 2022.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad 26<sup>th</sup> September, 2022.

*Vinodan/sps*

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5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*